

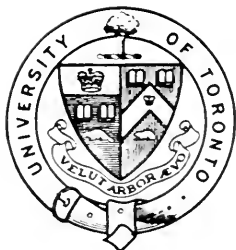


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PRACTICE IN THE JUDICATORIES

OF THE

CHURCH OF SCOTLAND.



THE PRACTICE

IN THE

SEVERAL JUDICATORIES

OF THE

CHURCH OF SCOTLAND

BY

ALEXANDER HILL, D.D.

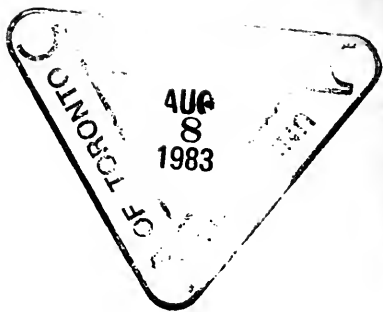
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NOTE TO THE SIXTH EDITION.

IN former editions of this work, no mention was made of the management of the poor by kirk-sessions, because the practice in parishes was far from being uniform, and the matter was not strictly an ecclesiastical one. It is still less necessary to notice the subject now, when a change has taken place on the law, and parochial boards have been substituted for kirk-sessions in the management of the poor. Whatever may be thought of the change, the former system is completely at an end.

Since the publication of the fifth edition of this work, some changes have taken place in both the law and the practice of the Church. These have been marked in their proper places, so as to exhibit what is at present held to be the right course of procedure.

In 1838 the Church Law Society published a volume entitled, *Styles of Writs and Forms of Procedure in the Courts of Scotland*. The same work has been "revised and adapted to the present state of the Law of the Church, by Dr Cook of Haddington," and has reached a third edition.



CONTENTS.

	PAGE
SECTION I.—THE KIRK-SESSION,	1
SECTION II.—OF PETITIONS, REFERENCES, DISSENTS, COMPLAINTS, APPEALS, AND EXTRACTS,	30
SECTION III.—THE PRESBYTERY,	43
SECTION IV.—THE PROVINCIAL SYNOD,	89
SECTION V.—THE GENERAL ASSEMBLY,	95
SECTION VI.—THE COMMISSION OF THE GENERAL ASSEMBLY,	108

APPENDIX.

NO. I.—FORM OF PROCESS IN THE JUDICATORIES OF THE CHURCH OF SCOTLAND WITH RELATION TO SCANDALS AND CENSURES,	111
NO. II.—THE PRESBYTERY ACTING IN A CIVIL CAPACITY,	142
LIST OF ACTS OF ASSEMBLY REFERRED TO,	157
INDEX,	160



P R E F A C E.

UNDUE importance may be attached to forms, and nothing is more pitiable than a mind which is wholly engrossed with their minute observances. But forms are treated unjustly when contempt is poured on them, and when they are held to be of no importance. They are necessary for the orderly conducting of business, and inseparable from it. Let the attempt be made to dispense with them, and either it will be found impossible to proceed, or, unconsciously on the part of those who have made the attempt, recourse will be had to forms of some kind or other. They are necessary even for attaining the ends of justice, or promoting the general good. When there is no fixed mode of procedure, and questions are taken up at will, parties labour under great disadvantages in bringing forward their cases; they have nothing to secure them against the caprice or arbitrary pleasure of their judges; and there is much danger of decisions being given inconsiderately, and under the influence of the feelings of the moment. The fickleness and impa-

tience of our nature require to be continually checked, and induce us, if unrestrained, to adopt partial views, and to come to sudden and ill-formed conclusions respecting both individual interests and matters of public and general concern. Were it not for the delays occasioned by the forms of our courts, and the cool and dispassionate analysis to which every new proposal is subjected in its passage through the inferior judicatories of the Church, how easy would it be to take advantage of the excited feelings of a popular assembly, and to introduce measures subversive of our ecclesiastical constitution? Capable of much improvement as the form of process is admitted to be, it is nevertheless the palladium of ministerial character, securing it against idle and groundless attacks, and placing it out of reach of being causelessly injured; and irksome as the observance of our ordinary forms may be, it is very much owing to a strict attention to these that anything like consistency appears in the decisions of our ecclesiastical courts, and that they have maintained their respectability for upwards of two hundred years.

It is not creditable to the office-bearers, and particularly to the ministers of the Church, to be ignorant of its forms of proceeding. They have pledged themselves to uphold its present government and discipline. They are called to preside in its courts. They have frequently to deliberate and vote for its interests; and whether they take an active part in the business

of the higher courts or not, they have duties to perform in their kirk-sessions which make some acquaintance with the constitution and the forms of our Church altogether indispensable.

A regular attendance on the Church courts is, without doubt, the most effectual means of attaining to an acquaintance with their forms. But that regular attendance it is not possible always, or in all situations, to give. Other means must therefore be applied to. Compilations of the Acts of Assembly, arranged under different heads, which have been published from time to time, are extremely useful. There is a compend of the laws of the Church, now in its second edition, which contains not only the Acts of Assembly, but also a reprint of various books or treatises connected with our Church, which are scarcely to be had. Among others there is Pardovan, so long the text-book, as it were, of ministers in all matters of government and of discipline. But even Pardovan, useful as it was, required to be remodelled. There is much in it that is superfluous, and a good deal in which, in modern times, it is deficient. The present little work is offered as a manual instead of Pardovan. Its object is to detail minutely and briefly the proceedings of the different courts in our ecclesiastical establishment. The simplest arrangement has been adopted for this purpose; and the utmost pains have been employed to prevent repetitions, and to compress the information that is given into the smallest compass.

There are marginal notes and an index given, to make it easy to refer to any particular topic. Should the work be useful, the author will gratefully receive any suggestions respecting its arrangement, or the omissions which he has made in it. For, however desirous he has been to be accurate in his information, he cannot presume to think that those who are still better acquainted than himself with the subjects of which he treats, will not discover many defects in his work.

In the View of the Constitution of the Church of Scotland by Principal Hill, there are some details respecting the proceedings of the different courts, and these are either quoted or referred to, as coming from an authority of the highest kind. But details, both ampler and more minute in their nature, appeared to be wanting ; and such it is the object of this work to supply.

The proceedings of a presbytery when it acts in its civil capacity are stated in an appendix. They differ from all its other proceedings in not being subject to the review of the superior Church courts. Advice is occasionally asked from a synod or an assembly in conducting them ; but the appeal lies to the Court of Session in all matters affecting churches, manses, glebes, and schoolmasters. For authority upon these subjects it is sufficient to refer at once to the valuable works of Sir John Connel and Mr Dunlop.

THE
P R A C T I C E
IN THE SEVERAL
JUDICATORIES
OF THE
CHURCH OF SCOTLAND.

SECTION I.

THE KIRK-SESSION.

A KIRK-SESSION is composed of the minister of the parish, and of lay elders. It is “legally convened, when summoned by the minister from the pulpit, or by personal citation to the members.”¹ Meeting. There are no fixed times for its meetings. In many parishes they are held at regular and not very distant intervals. This gives greater respectability to the court than when it is ready to be summoned on every occasion that an individual applies to have his case considered. The business before a kirk-session may be so easily and speedily settled, that, for the convenience of having the members assembled, its meetings are not unusually held

¹ Hill's View of the Constitution of the Church of Scotland, p. 48, 3d edition.

immediately after divine service is finished on the Lord's day. But in general, it is more for edification that the day of sacred rest should be entirely devoted by the office-bearers of the Church, as well as by others, to its own peculiar purpose, and that the ordinary business of a kirk-session, as is the case in many parts of Scotland, should be transacted on a week-day. This is also conformable to ancient practice.¹

The meeting is constituted, and is also concluded, by prayer ; and both these acts must be entered
 Constituted. in the minutes, otherwise *ex facie* the meeting has not been regularly held.

The minister of the parish is officially moderator of
 Who pre- the kirk-session. Where there is a collegiate
 sides. charge, either minister presides, as that matter may be settled between them. The other is a constituent member of the session. In the absence of the moderator, any other minister may preside in his name, and with his permission. It has been questioned whether such a practice is legal and constitutional. There is no doubt as to the occasional practice, and its convenience at times.

In the event of a vacancy in the parish, whether by the death of the minister or otherwise, his place is supplied by the members of the presbytery in succession, who have power, by appointment of the presbytery, to perform in that parish, each of them, when he is sent to officiate there, all the parts of ministerial duty which the incumbent himself has to discharge. This practice received the express sanction of the General Assembly in 1820, when a reference was made to it by the presbytery of Fordoun, on occasion of a protracted vacancy in the parish of Arbuthnot.² But the Church is jealous of

¹ Book of Common Order, ch. v.

² Act 8, Assembly 1820.

intrusting such a power, for a length of time, to any one but the incumbent himself. And it was upon this principle that the presbytery of Edinburgh, notwithstanding the mass of business that would accumulate in such a parish as North Leith, refused, during a prolonged vacancy, to appoint one of its own members to call meetings of the kirk-session whenever they might be deemed necessary, and to preside in them during the continuance of the vacancy.

An ordained assistant and successor to a minister is not a constituent member of the kirk-session with which that minister is connected. This was decided by the General Assembly, in the Cambuslang case.¹ An interim act upon the subject was passed, and was transmitted to presbyteries as an overture, in 1784, and the three following years; the purport of which was, that ordained assistants and successors should be made constituent members of session, and either the minister or his ordained assistant should sit and vote in the presbytery and synod, and be eligible as a member of Assembly.² But the sense of the Church was never obtained upon these points; and no further notice was taken of the matter after 1787 till 1806, when another overture was transmitted, in which it was proposed, that ordained assistants and successors should not be constituent members of session, and that all ministerial authority and privileges should continue to reside in the minister of the parish, except by the special permission of the Church.³ This overture was not retransmitted: and it does not appear that any returns were made to it. But the decision of 1806 establishes the point, that a minister and his ordained assistant do not both sit as

¹ Assembly 1806, Sess. 4.

² Act 7, Assembly 1784.

³ Act 5, Assembly 1806.

members of session ; and it is the understanding throughout the Church, that so long as a minister is not incapacitated for acting, he alone has the power to call meetings of the session and to preside in them ; and the ordained assistant can only preside in his room. In like manner, a minister and his ordained assistant cannot both be acknowledged as members of presbytery or synod, or be elected members of the General Assembly. An assistant and successor may be sent to the Assembly when his constituent remains at home.¹

In the kirk-session, as in all other judicatories of the Church, the moderator has only a casting
Casting vote. vote.

The number of elders belonging to a kirk-session is regulated by the exigencies of the parish.² In every kirk-session there must be at least two elders, as it requires a minister and two elders to form a quorum of the session. The attention of the General Assembly 1825 having been called to the fact, that in many parishes meetings of the kirk-session were not held from the want of a sufficient number of elders, an injunction was issued by that Assembly, and by the three following Assemblies, to all the presbyteries of the Church, "to use their best and most prudent endeavours to have all the parishes within their bounds suitably supplied with elders."³ From the concluding notice respecting this matter, by the Assembly 1828, it appears that the injunction had not been so far observed as to attain the object of having an efficient kirk-session in every parish.⁴ It is plainly a departure from the constitution of our

¹ Assembly 1833, Duncan, Presbytery of Dumfries.

² Second Book of Discipline, ch. vi. sect. ii.

³ Assembly 1825, Sess. ult.

⁴ Assembly 1828, Sess. ult.

Church to allow such a defect to exist ; and it lies with the presbyteries, within whose bounds any parish remains without its proper ecclesiastical court, to continue those endeavours which they are enjoined to use till the object in view has been fully accomplished.

The number of elders in a kirk-session is usually kept up by the election of new elders as vacancies occur. At first there was a change in the eldership every year ; the duties of the office being considered too burdensome, and also of too serious and important a nature to admit of its being held for a longer period at once.¹ But “eldaris anis lawfully callit to the office, and having gifts of God meit to exercise the same, may not leave it again.”² The election or nomination belongs to the session, who look out for such as they deem fittest to hold the office, and deal with them in private to ascertain their willingness to accept of it.³ This was the old practice, and it has been resumed. In 1842, a different and very cumbrous mode of electing elders was adopted by the Assembly, after having been approved of by a majority of presbyteries. But complaints of its working were very general ; and in one year the returns to an overture for rescinding the act 1842 were so numerous, as to enable the Assembly 1846 at once to set the obnoxious act aside.

“The elders must be men of good life and godly conversation, without blame and all suspicion, careful for the flock, wise, and, above all things, fearing God.”⁴ “Men of best knowledge in God’s

¹ First Book of Discipline, ch. x. 3.—Election of Eldaris and Deacons in the church of Edinburgh, approved by Assembly 1582, Sess. 12.

² Second Book of Discipline, ch. vi. 2.

³ Assembly 1642, Sess. 5, compared with Election of Eldaris and Deacons.

⁴ Book of Common Order, ch. ii.

word and cleanest life, men faithful and of most honest conversation that can be found in the kirk must be nominate to be in election.”¹ In conformity with these declarations of the founders of our Church, “the General Assembly appoints the judicatories of this Church to take good heed that none be admitted to, or continued in the office of, an elder, but such as are tender and circumspect in their walk, and punctual in their attending upon ordinances, and strict in their observation of the Lord’s day, and in regularly keeping up the worship of God in their families.”² This act of Assembly has been repeatedly renewed and pressed upon presbyteries. Other qualifications of an elder are, that he must have attained the age of twenty-one; that he must be a communicant, and an inhabitant of the parish, residing therein at least six weeks annually, or an heritor in the parish liable to pay stipend and other parochial burdens, or the apparent heir of an heritor of that description in the parish. Respecting any person proposed to a kirk-session to be ordained an elder, who resides only occasionally in the parish, a certificate must be produced under the hands of the minister and kirk-session of the parish where he generally resides, that he is of unblemished character, and regular in giving attendance on the public ordinances of religion.³

Before the ordination of elders, and at the distance of not less than ten days from it, their edict must
 Edict. be served; that is, their names must be “publicly proclaimed in the audience of the whole church, upon a Sunday before noon, after sermon, with admonition to the church, that if any man know any notorious crime or cause that might enable any of those persons to enter in such a vocation, they should notify the same to the ses-

¹ First Book of Discipline, ch. x. 1.

² Act 9, Assembly 1722.

³ Act 10, Assembly 1816.

sion." "If any of those nominate be noted with public infamy, he ought to be repelled."¹ A day should be named on which objections may be lodged.

Ordination. "If no member of the congregation offers any objection," either upon the day that was named when the edict was served, or "upon the day fixed for the ordination, or if the session finds the objections that are offered frivolous, or unsupported by evidence, the minister proceeds, in face of the congregation, to ordain the new elders; that is, to set them apart to that office by prayer, accompanied with an exhortation to them, and an address to the people."² The ordination takes place after sermon, and after the minister has obtained satisfactory answers to the following questions, which he proposes publicly to the persons whose edict was served:—"Do you believe the Scriptures of the Old and New Testament to be the word of God, and the only rule of faith and manners? Do you sincerely own and believe the whole doctrine of the Confession of Faith, approved by the General Assembly of this national Church, and ratified by law in the year 1694, to be the truths of God; and do you own the whole doctrine therein contained as the confession of your faith? Do you sincerely own the purity of worship authorised and practised in this Church; and are you persuaded that the Presbyterian government and discipline, now so happily established therein, are founded upon the word of God, and agreeable thereto? Do you promise that, in your practice, you will conform yourselves to the said worship; that you will submit yourselves to the said discipline and government; that you will never endeavour, directly or indi-

the Ch. of S.
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¹ First Book of Discipline, x. 1—Election of Elders and Deacons.

² Hill's View of the Constitution of the Church of Scotland, p. 49, 3d edition.

rectly, the prejudice or subversion of the same; and that you will follow no divisive courses from the present establishment in the Church? Do you accept of the office of an elder of this parish; and promise, through grace, faithfully, diligently, and cheerfully to discharge the duties thereof?"¹

The ordination being finished, the minister directs the new-made elders to meet with the session at the conclusion of divine service, that they may receive the right hand of fellowship. There also their names are entered upon the roll of the session. By the answer which they are expected to return to the second question, they express their approbation of the Confession of Faith; and either at their ordination, or whenever they are judicially called upon to do so, they must subscribe the formula agreed to by our Church. This formula is the substance of the questions proposed. The great reason for requiring subscription to it is, to obtain from those who sign it an explicit declaration of their assent to all that is contained in the Confession of Faith. From the year 1698 downwards, this has been considered as a *sine quâ non* in the qualification of an elder. And when a minister, in the close of the last century, presumed, in ordaining elders, to depart from the established practice, and not only not to insist upon subscription to the formula 1694, but to propose questions different from those which are implied in that formula, and by no means adequate to its spirit, a very solemn and circumstantial deliverance was given by the General Assembly upon the subject, and he himself being called to the bar of the Assembly in the following year, was admonished of his duty, and enjoined to be more careful for the future.²

¹ Act 11, Assembly 1700. Act 10, Assembly 1711.

² Assembly 1799, Sess. 8. Assembly 1800, Sess. 7. Assembly 1832, Sess. 4. Barclay.

When a parish is entirely without elders, the minister applies to the presbytery of the bounds to appoint a kirk-session for his parish; or the presbytery, being ascertained of the fact, proceeds of itself to do so. Two or more members of presbytery are appointed to act as assessors with the minister. A meeting is held with the heads of families; fit individuals are selected; their edict is appointed to be served; the presbytery meets again for their ordination, or the assessors meet with the minister; and the forms as above described are observed. A case came before the General Assembly 1827, in which elders had been ordained, when there was no kirk-session, without any application to the presbytery of the bounds; and their ordination not being according to the rules and laws of the Church, was declared to be null and void.¹

An elder, removing from one parish to another, is often admitted *ad eundem* in the kirk-session of the parish where he takes up his residence. In this case it is only necessary to serve his edict, or give notice to the congregation that the person in question, having been already ordained an elder, will be received as a member of the kirk-session, unless valid objections be shown.

It is competent for a kirk-session to find that an elder who does not reside within the parish, and who does not return to it within twelve months to discharge the duties of an elder, can no longer continue to be one of their number. This finding they intimate to him by letter.²

Few cases have occurred in which it has been necessary to institute proceedings against elders; and the only direction which the Church has given for dealing with an elder who is in fault, is

¹ Assembly 1827, Sess. 6. Kilbrandon. ² Assembly 1806, Sess. 7.

the general one already referred to in Act 9, Assembly 1722, that "none be continued in the office of an elder" whose conduct is reprehensible. Doubts have in consequence been entertained as to the proper mode of proceeding against an elder who has been guilty of such an offence as would disqualify him for his office. It has been asked if he should be dealt with by libel?—if it belongs to the kirk-session to judge of the case, and to dispose of it?—or if the case should be submitted to the presbytery of the bounds, and carried on before it? There is nothing in the *Form of Process* to determine these points; and cases of the kind have been so rare that nothing can be gathered from the records of the Church as to the practice. If an opinion may be hazarded in the imperfect state of the law, the case of an offending elder comes under the cognisance of the kirk-session, the court of which he is a member. Proceeding by libel is unknown there. The first step will be to deal with him privately as a brother; and the next, if guilt be acknowledged, or established by proof, to subject him to discipline as any other individual would be. His being dealt with as an elder arises from his being found guilty as a man; and as the law is explicit as to his not being allowed, in his circumstances, to continue in the office of an elder, and as it is of the essence of all Church judicatories to hear and determine in such cases as shall orderly come before them, and accordingly to dispense Church censures, the only course for the kirk-session to pursue is to depose him from the office of an elder, and to declare and record that he is so deposed. The whole proceeding should be conducted with becoming solemnity, and not without prayer.

The right of appeal to the presbytery in this, as in other cases, will belong to the party accused, should he think proper to use it.

It belongs to the kirk-session to superintend and promote the religious concerns of the parish in regard to both discipline and worship; to appoint special days for the worship of God, when it considers such days to be for the spiritual advantage of the parish; to settle the time for dispensing the ordinances of religion; to judge of the qualifications of those who desire to partake of them; to grant certificates of character when persons are about to remove from the parish; to take cognisance of such as are guilty of scandalous offences, and to cause them to undergo the discipline of the Church. The right of kirk-sessions to determine as to the frequency of dispensing the sacrament of the Supper, is under the control of their respective presbyteries.¹

A communion-roll is kept by the kirk-session in most parishes, if not in all. It is an important record for determining who are members of the congregation and communicants in the Church. It should be examined and adjusted on every occasion when the sacrament of the Supper is dispensed. In former times it was the common practice, previous to the dispensation of the Lord's Supper, for kirk-sessions to purge the roll of communicants; that is, to consider who were entitled to be admitted to that ordinance, and who were unworthy, in consequence of any circumstances in their conduct since the last celebration of it. The persons upon whom animadversions were made were either called before the session, or were waited on in private by some of its members, and they were received or not, as communicants, according to the appearance and professions of repentance which they made. Something of the same

¹ Assembly 1833, Sess. ult. Inglis, Synod of Lothian and Tweeddale.

kind continues to be done, although probably nowhere in the same formal manner as before. The names of those who are admitted to the Lord's table for the first time should be added to the roll, as well as the names of those who have taken up their residence in the parish, and produced certificates of membership in other parishes. The more correctly and particularly that the roll is kept, the less difficulty will there be in determining who are entitled to certificates of membership when they are about to leave a parish. It is to the communion-roll that reference is made to ascertain who are communicants or members of the congregation, when the settlement of a presentee is objected to.

Three separate registers are required by the Assembly to be kept in every parish; one for recording the names of all children and of their parents, with the dates of their birth; another for recording the names of all persons married, with the dates of their marriages, whether legally solemnised or not; and a third for recording the names of all persons who have died, with the particular dates of their deaths, whether they may have been buried in the parish burying-ground, or elsewhere.¹

The management of a parish is not unusually left, in a great measure, to the minister. His various duties bring him much into contact with his people, and enable him to form a very intimate acquaintance with their circumstances and their character. He is also not only the organ of the kirk-session, but in almost every instance its counsellor, and the object of its confidence; while, at the same time, he has too much respect for its members, and too much value for their gratuitous services, to take any measures of which he is not satisfied that they will approve. It is important,

¹ Act 11, Assembly 1817.

however, for him to remember, that it is not in his individual capacity, but as moderator of the kirk-session, that he has power either to admit to privileges or to refuse them, and that consequently, in any case of difficulty, he should direct the person applying to make his request to the session. The request is then minuted and discussed, and if the party thinks himself aggrieved by the decision, he has it in his power to seek for redress by appealing to the superior court. It is comparatively a rare thing that a man pushes himself forward in opposition to the wish of his minister and of the other members of session. They have much private influence in their different parishes; and so discreetly, upon the whole, is that influence exerted, that the business of kirk-sessions is in consequence greatly diminished, or at least greatly facilitated. It is thus that, without any formal procedure, privileges are often withheld for a time from those who have given offence by the levity of their conduct, or their disregard of the ordinances of religion, or who have been found, upon examination, to be ignorant of the truths of religion. This exercise of authority, accompanied, as it should always be, with earnest and affectionate private admonition, is agreeable to the form of process, and will generally produce the best results.¹

Privileges cannot be refused to any person merely upon suspicion of his having been guilty of improper conduct, however strong the suspicion may be. The facts must be admitted by him, or, in consequence of information being given to the session, or of a *jama* against him, must be in the course of probation to warrant such procedure. A kirk-session exposes itself to censure, if the person insists upon his privileges, and no grounds can be shown for withholding them.

¹ Form of Process, ch. ii. and iii. Act 11, Assembly 1707.

The General Assembly ordered privileges to be granted in a particular case, notwithstanding continued absence from the parish church, because the appellant had concerns in another parish, which frequently obliged him to be in that parish in the end of the week, and because he attended divine worship regularly there.¹

Ignorance of the particular views of Christian doctrine entertained by a minister or his session, is not a sufficient ground for refusing privileges. It is the being grossly ignorant which is particularly mentioned as unfitting a parent to stand as sponsor in transacting a solemn covenant with God.² Members of the visible Church, who profess their faith in Christ and obedience to him, and whose conduct does not subject them to the censures of the Church, are entitled to privileges. In every parish there will be some unhappy individuals, who, notwithstanding the most painstaking efforts to instruct them, will still be deficient in their information upon the important truths of religion. What course should be followed in regard to them, it is difficult to say. They are objects of compassion, for whom prayers should be unceasingly offered, in addition to any means that are used for enlightening their minds. But deplorable ignorance is confined to comparatively few. When privileges are withheld from great numbers on the score of ignorance, there is room to apprehend that the fault is less with the people than with their rulers, who, instead of "holding fast the form of sound words," are bent upon propagating their peculiar sentiments, and dissatisfied with all who do not embrace them; or are not sufficiently plain and practical in stating and applying the

¹ Assembly 1809, Sess. ult. White, Avondale.

² Act 4, Assembly 1712.

truths of Christianity. The Church does not suffer anything like a general stoppage of privileges.¹

“ In that temperate exercise of discipline which the
Discipline. general practice of the Church of Scotland recognises as congenial to her constitution, care is taken to avoid every appearance of intermeddling officiously with those matters that fall under the cognisance of the civil magistrate ; no solicitude is ever discovered to engage in the investigation of secret wickedness ; counsel, private admonition, and reproof, are employed in their proper season, and the public censures of the Church are reserved for those scandalous sins which bring reproach upon religion, which give offence to the Christian society, and which cannot be overlooked without the danger of hardening the sinner, of emboldening others to follow his example, and of disturbing and grieving the minds of many other Christians.”² Nothing is admitted as the ground of a process for censure but what has been declared censurable by the word of God, or some act or universal custom of this National Church, agreeable thereto. And a scandal, that has not been noticed in order to censure for the space of five years, cannot be again revived so as to enter a process thereanent.³ Neither can a case of scandal, the decision of which had become final, be revived.⁴

Before moving in any case of scandal, the session has to consider whether it would be most for edification to make it a ground of process, or a subject of private admonition ; and whether the matter is rightly brought before the judicatory, and proper for it to enter upon.

¹ Assembly 1824, 1826, 1827. Bracadale.

² Hill's View of the Constitution, &c., p. 79, 3d edit.

³ Form of Process, c. i. 4.

⁴ Assembly 1811, Sess. 4. Lyon, Synod of Angus and Mearns.

In a case of uncleanness, kirk-sessions are required to be very cautious how to admit the public entering a process without good warrant, where there is not a child in the case, unless the scandal be very flagrant.¹

Scandals are noticed in order to censure in the parish where they are committed, or where the parties ordinarily reside ; or, in the case of uncleanness, and when the persons guilty of it belong to different parishes, in the parish where the woman lives, or where the scandal is most notour.²

The first step in any case is to ascertain that the persons or parties concerned have been duly sisted before the session ; and for this purpose, the execution of summons, bearing its cause, and made before two or three witnesses insert, is to be returned by the beadle or officer in waiting, and the parties cited are to be called at the door.³

Citations to appear before a kirk-session can be issued only by the session of the parish in which the person to be summoned resides ; and one kirk-session, on being applied to by another, is bound to cause summon the person charged with scandal to appear before that session where the scandal is to be tried.⁴

A citation must be in writing, bearing its cause, either at the instance of a party complaining, or at least by order of the judicatory. If the parties reside within the parish, it may be upon forty-eight hours' advertisement. It is either given to them personally, or left at their dwelling-house. If the party summoned fails to appear, a second citation follows, and also a third ; but the third

¹ Form of Process, ch. ii. 1, 2 ; iii. 1.

² Form of Process, ch. iv. 15, 16. Separate Act, Assembly 1771.

³ Form of Process, ch. i. 3.

⁴ Ibid. ch. i. 6 ; iv. 17.

is peremptory, and infers contumacy if not obeyed. It is usually given with certification, either that the person will now be held contumacious, or that the case will be proceeded with in his absence. Citations *apud acta* are also peremptory.¹

Contumacy is one of the greater offences for which a kirk-session is not allowed to inflict censure by itself. Reference is to be made to the presbytery of the bounds, and the contumacious person is to be cited to appear before that judicatory.² But it is competent for a kirk-session, in a case of contumacy, before reporting it to the presbytery, to take cognition, either by examining witnesses, or by other documents, of the verity of the scandals delated against the contumacious person.³

Citations to witnesses in a cause are made in the same way as to parties. A list of the witnesses to be made use of in the process is given to the defender some time before, or at least at his compareance; and he is allowed to object to any of them; and if he satisfies the session of the relevancy of his objections, the witnesses objected to are cast.⁴ Additional witnesses, by the examination of whom the time of concluding the proof would be prorogued, cannot afterwards be produced.⁵

Singulares testes, or witnesses who have no concurring testimony, do not amount to a legal proof. Disapprobation was expressed by the General Assembly when they were taken into one vote, with the *plene probatá*, as the ground of a sentence.⁶

¹ Form of Process, ch. ii. 3, 4, 5. ² Ib. ch. vi. ³ Ib. ch. ii. 6.

⁴ Ib. ch. ii. 9, 10. Assembly 1815, Sess. 9. Lockerby.

⁵ Assembly 1785, Sess. 6. M'Lagan.

⁶ Assembly 1700, Sess. ult. Revising Synod-book of Dumfries.

The evidence of witnesses not of entire fame, or nearly connected with parties, is taken *cum notâ*.

A person may be a witness although he has given the information upon which the session proceeds, unless he has complained for his own interest, or unless the presumptions of his malice against the accused person be strong.¹

In all courts it was formerly required to purge every witness of malice, good deed done or to be done, and partial counsel. This is not held to be necessary now. Every witness is sworn and examined in presence of the accused party, if compearing; and signs his deposition. When witnesses cannot write, the clerk marks that they declare so. Every deposition of a witness is signed by the moderator.²

After a witness has finished his deposition, the party accused may propose, through the moderator, such questions or cross-questions as may tend to his exculpation, subject always to the session, which may refuse to have them put if they do not appear to be pertinent. The party accused may also, before going to proof, offer grounds of exculpation to be proven by witnesses. In that case, the session first considers the relevancy of the offered exculpation. If satisfied of that, the session, when required to do so, causes the witnesses to be summoned at the party's charges. And if the exculpation be fully proven as to the substance of the scandal, all further proof of the accusation is sisted, and the defender is assolizied.³

In many of the cases which come before a kirk-session, and particularly in those of uncleanness, absolute proofs of guilt are scarcely to be had. The

¹ Form of Process, ch. ii. 10.

² Ibid. ch. ii. 11, 12, 14.

³ Ibid. ch. ii. 12, 13.

following are considered as pregnant presumptions of a man's guilt with a woman, and as sufficient to subject him to discipline, if he cannot disprove them—viz. suspicious frequenting of her company, being *solus cum solâ in loco suspecto*, or in suspect postures, and the like.¹ It is often a severe trial upon the patience of a kirk-session to listen to the mutual recriminations of the parties before them, which, with the class of people that they have to deal with, it is almost impossible to stop; or, with a conviction of his guilt upon their minds, to hear the evasions of the party accused, and his repeated asseverations of his innocence. From the intimate knowledge which the members of session have of the people under their care, scarcely any case comes before them, with the particulars of which some or all of them are not previously acquainted. But sitting as judges, the proof that is adduced may not be sufficient to bear them out in finding the defender guilty. In that case, the form of process warrants them to sist procedure till God in his providence give farther light.² This is an unsatisfactory result of the process. But the very unsatisfactoriness of it, together with the exclusion from privileges which accompanies their continuance under scandal, often has a good effect upon the parties, in quickening their diligence in finding proofs, or bringing them to an acknowledgment of their sins.

At all events, it is considered to be preferable to pressing the oath of purgation upon a man, the taking of which is the only way of removing the scandal in the circumstances mentioned above. This oath, in the administering of which the utmost tenderness and caution are to be used, is never to be taken without the advice of the presbytery of the bounds.³

¹ Form of Process, ch. iv. 7. ² Ibid. ch. iv. 7. ³ Ibid. iv. 7, 8, 9.

When an unmarried woman is known to be with child, there is ground for a process against her. She is cited before the session, and on her appearance is required to declare who is the father of her child. If she discover not the father, she is dealt with as contumacious. The father being named, and not appearing voluntarily to confess his guilt, is summoned before the session, and informed of the charge against him. If he deny, he is confronted with the woman ; and the matter, if necessary, goes to proof. If the man clears himself of the charge, the woman is dealt with to give the true father ; and if she gives no other than she formerly named, she is censured according to the quality of the offence confessed by her, and remains under scandal till further discovery.¹

There is also ground for a process when a married woman, whose husband has been notourly absent for a considerable time beyond the ordinary period that women use to go with child, is found with child. But the form of process requires such a case to be handled with great prudence ; and, being a case of adultery, it must be referred to the presbytery of the bounds, before it is proceeded with by the kirk-session.²

It may happen that a woman declares she does not know the father of her child. Here also the prudence of the session is required to be exercised : the advice of the presbytery is asked ; the woman, if of good character before, is called on to declare the truth, as if she were upon oath ; but no formal oath is allowed to be administered ; and if she confesses that she was not forced, but does not know the father, she is, whether married or unmarried, dealt with as an adulteress.³

When a person confesses uncleanness, and there is no *corpus delicti*, particular care is taken to ascertain the

¹ Form of Process, ch. iv. 5, 7, 10. ² Ibid. iv. 4. ³ Ibid. iv. 11.

motives which have led to such a confession, lest it should arise from a wish to injure the person with whom the act of uncleanness is said to have been committed.¹

The processes which a kirk-session does not determine, but refers to the presbytery for advice as to its procedure thereanent, are, scandals of incest, adultery, trilapse in fornication, murder, atheism, idolatry, witchcraft, charming, and heresy and error, vented and made public by any in the congregation, schism and separation from public ordinances, processes in order to the highest censures of the Church, and continued contumacy. In regard to these, the session first endeavours to obtain a confession of them, and then refers the case to the presbytery, sending an extract of its procedure, a part of which is to summon the parties to compear before the presbytery. Or if there be no confession, it makes the reference to the presbytery, before proceeding to lead probation; and if probation is allowed to be led, the same, when finished, is brought to the presbytery for direction as to the censure to be inflicted. It is usual for presbyteries to remit those who compear before them to their own kirk-sessions to receive orders respecting the discipline which they are to undergo.²

In general, therefore, it devolves upon kirk-sessions to prescribe the manner of making professions of repentance. The practice here is not uniform. Some kirk-sessions still require public appearances to be made before the congregation, although not with all the circumstances of severity with which our code was wont to be administered. Others, again, adopt a much more lenient mode of proceeding, merely appointing the parties to receive a rebuke in presence of the

Administra-
tion of dis-
cipline.

¹ Form of Process, iv. 12, 13.

² Ibid. ch. vi.

session. Everywhere there is an accommodation, more or less, to the change of times, and the change of feelings in the Christian community. The great objects for which discipline is prescribed are, to secure good order in the Church, and to promote edification. It is to be presumed that, whatever be the course which is followed in administering discipline, the members of sessions keep these objects in view. It cannot be supposed that, in their responsible situation, objects of such importance will be overlooked by them; and it would be rash to pronounce that even where public appearances are dispensed with, and the greatest leniency is shown, there is a want of attention either to good order or to edification. The attainment of absolution from scandal being left to the discretion of the session, it may be invested with difficulties as to the time when absolution will be granted, and the outward good conduct which must be previously observed, and the private examinations which must be previously submitted to; and these difficulties may be fully as formidable to the subjects of discipline, and fully as profitable, as ever was a public rebuke. A session which desires the good of those committed to its care, and remembers that its power has been given "for edification, and not for destruction," will not only seek for signs of repentance, but use every means to produce them; and will doubtless employ that private dealing with the unhappy individuals before them, which the standards of our Church in all cases recommend, and which may be expected to be peculiarly successful, when humbling confessions or disclosures have been made.¹

¹ Form of Process, ch. iii. 1. First Book of Discipline, ch. ix. Assembly 1596, Sess. 7. Hill's View of the Constitution, pp. 79-80.

All persons under scandal are excluded from privileges.

**Excommu-
nication.** The lesser excommunication, or suspension from the privileges of the Church, is the highest censure which kirk-sessions usually inflict. "When the offender, instead of being reformed by the sentence of the lesser excommunication, presumptuously persists in his former sins, the session proceeds, under the direction of the presbytery, and with the utmost solemnity, to the greater excommunication. Yet even this sentence is not understood to have any effect in dissolving the relations of civil life. It leaves access to the various means of reformation; and it is removed by the sentence of absolution, which the Church is always ready to pronounce upon satisfying evidence of repentance."¹

A person under the sentence of excommunication is not relieved from it upon giving satisfaction to the minister or kirk-session of his parish. The presbytery of the bounds must first be satisfied as to his repentance.²

When the censure of the lesser excommunication has been inflicted on a person who lives under a different session from that by which he has been convicted of scandal, intimation to that effect is given to the session of the congregation to which he belongs.²

Those who abscond, during the dependence of a process for scandal against them, are summoned from the pulpit of their own parish church, and failing to appear, are reported to the presbytery; ordered by it to be cited to appear before it, from the pulpits of all the churches within the bounds; and

¹ Hill's View of the Constitution, p. 80. The Ordoire of Excommunication, and of Public Repentance, Assembly 1569. Form of Process, ch. iii. 4, 6; ch. viii. ix.

² Assembly 1714, Sess. 7. Revisal of Synod Book of Orkney.

³ Form of Process, ch. iv. 18.

not compearing, are declared by the presbytery to be fugitives from church discipline, the same being directed to be intimated in all the kirks within the bounds.¹

Cases of difficulty, and scandals of the grosser kind, it is requisite that a kirk-session should refer to the presbytery of the bounds. From the delicacy which members of session feel in regard to their acquaintances and neighbours, or the doubts which they entertain of the validity of the evidence submitted to them, or their wish to throw the odium of the sentence off themselves, or the weight which they expect it to receive from being suggested or pronounced by the presbytery, even ordinary cases of discipline are often made matters of reference. These last references, however, are extremely ill received in the superior court; and from the deliverance invariably given on them, "remit to the kirk-session to proceed according to the rules of the Church," the members of kirk-sessions may learn that they have nothing to gain by following such a course, and that, generally speaking, it is more to their own credit, and more conducive to the public good, to fulfil their duty in every case by exercising their own judgment.² When there is a reference to the presbytery, an extract of the whole of the proceedings of the session, upon the case, is made from the minutes, subjoined to which is the resolution to refer. The reference may be either *simpliciter*—that is, in regard to the whole case, without any opinion of the session being expressed—or upon some particular point, which, in the course of proceeding, has appeared to the session to be a matter of difficulty.³

¹ Form of Process, ch. ii. 16.

² Hill's View of the Constitution, p. 98.

³ See Section II. of this work.

Any member of a session, or the minority of a session, may dissent from its proceedings, and cause that dissent to be recorded, and may also complain of these proceedings to the next superior court, and so bring them all under review.¹

A party also, who thinks himself aggrieved by the judgment of a kirk-session, may bring his case before the presbytery of the bounds by appeal. The appeal must be made immediately when the judgment is pronounced. It is not competent to make it at a subsequent meeting of the court; nor is the party entitled to have the minutes read over to him at that subsequent meeting, so as to give him an opportunity of entering an appeal. Extracts of the session's procedure in his case it is necessary for him to produce to the presbytery, and these also he must crave at the time of making his appeal. And, finally, his reasons of appeal must either be stated at the time that the sentence appealed from is given, or be lodged with the moderator or clerk within the space of ten days, and be in writing, subscribed by himself. If the reasons of appeal are not lodged in due time, the appeal is held to be null and fallen from.²

Law agents are not allowed to parties before a kirk-session.³ The nature of the court renders it unfit that they should be allowed. The object of a kirk-session is to promote the spiritual welfare of those who are under their superintendence, to

Law agents
not admitted.

¹ See Section II. of this work.

² Act 8, Assembly 1694.—Form of Process, ch. v. i.—Assembly 1784, Sess. 9. Henderson, Presbytery of Lochmaben.—Assembly 1807, Sess. 6. Wylie, Synod of Angus and Mearns. See Section II. of this work.

³ Assembly 1827, Sess. 9. Anderson, Presbytery of Paisley. Stewart's speech, Christian Instructor, 1827.

reach their consciences, to lead those who have erred to repentance, and, by a calm investigation of facts and circumstances, to judge whether the accusations that are made are well or ill founded. It is consequently of the utmost importance that parties themselves should appear before the session, and be dealt with by it; that they should state their own case; and show the grounds upon which they either make their accusation or rest their defence. It will rarely happen that, with the previous knowledge which the members of session have of the parties before them, opportunities will not thus be afforded of arriving, even amidst all the contrariety of statement that is made, at something pretty near to the truth; and that, either by the firmness which the members display in abiding by the opinion which they have formed, or by the affectionate earnestness with which they press upon the parties the unhappy situation in which they are placed, they will not succeed in terminating satisfactorily the process in which they are engaged. The history of kirk-sessions, the comparative fewness of the cases in which any dissatisfaction is expressed with their proceedings, and the confidence with which the people in general rely upon their decisions, are the best proofs of the wisdom of that constitution, which makes them mainly courts of conscience. Were law agents, on the other hand, to undertake the cause of parties before a kirk-session, it would be hopeless to expect that any moral or spiritual benefit would result from its proceedings. The agents would necessarily consider only by what means their clients, whether guilty or not, might be rendered successful; and the clients, removed from the operation of that influence which their minister and elders may be supposed to have over them, would be only anticipating a triumph from the talents displayed in their behalf. It

is not to be doubted, also, that if law agents were permitted to act in kirk-sessions, it would scarcely be possible, at least in country parishes, to have any kirk-session. The elders are, in general, respectable and well-informed men. They have a zeal against sin, but they have also much tenderness for the people. They are not ignorant of their duty. They are at pains to understand it, and they are most praiseworthy in performing it. But if their labours of love were to be rendered intricate and harassing by the subtleties of the law ; if, instead of being instruments of good, they should find themselves puzzled and perplexed, and overborne by men who have no other object but to extricate a particular individual from the awkward situation into which he has been brought, who would desire the office of an elder ? or who would accept it ?

From parties being thus without any one in particular
Treatment of parties. to manage their cause, it is the more incumbent on the members of session to explain to them fully and distinctly how they should conduct it in the session, or how, if dissatisfied with the issue of it there, they should carry it by appeal to the presbytery. Perhaps there never was an instance in which this was overlooked ; or in which the utmost consideration was not shown to parties ; in which every possible aid was not given to them, whatever they might be ; and the utmost pains were not taken to impress upon their minds, that if they wished their cause to be further considered, the rules of the Church must be strictly complied with.

The minutes of kirk-sessions are regularly kept ; the
Minutes. members in attendance, and the business transacted at every meeting, being faithfully recorded. It is not necessary, at least in the first instance, to enter

in the record all the evidence which is taken before a session. Many cases of scandal, notwithstanding the vehement opposition that is made to closing with the charge, terminate in an acknowledgment of the offence ; and it is this result only, which, in such cases, it is essential to notice. On this account also, kirk-sessions are slow in putting witnesses upon oath, trying, in general, the effect of a precognition in throwing light upon a case. Whatever goes by a reference or appeal to a superior court, is necessarily a part of the record. The session-record needs to be regularly kept, as the presbytery may issue a peremptory order to have it produced.¹ By the Assembly 1639, it was required that the session-books of every parish be presented once a-year to the presbyteries to be tried by them. This standing order is perhaps more observed than it was, it being by no means an uncommon practice to submit the parochial register to the committees of presbyteries, by which the schools are annually examined, and to have them attested by these committees.

It is believed not to be usual for the moderators of kirk-sessions, as the moderators of the other Church judicatories do, to sign the minutes of session. But it would be more correct to have them regularly signed. In a case which occurred many years since in the civil court, a minute of a kirk-session which was produced in evidence was objected to as informal, because it had not the signature of the moderator attached to it. The Lord Ordinary, before deciding the question of informality, directed inquiry to be made as to whether it was the practice of that kirk-session to have its minutes signed by the moderator or not. The same deference may not always be shown to the practice of particular kirk-

¹ Hill's View of the Constitution, p. 59.

sessions; and as it is confessedly informal to have minutes without signatures, and as it may be of bad consequence, both to the interests of individuals and to the character of the Church courts, if unsigned minutes are adduced in evidence, it is advisable that ministers and session-clerks should attend to have them duly signed as soon as they are approved of.

A scroll minute is usually written by the clerk as the business proceeds. This scroll should be read over to the kirk-session before the meeting is closed, and the moderator should affix the initials of his name to it to insure its being correctly extended. The scroll-minute is afterwards written out fully in the session record, read at length as the first business of the next meeting, and signed by the moderator when it is approved of.

Not only must the minutes be correctly written, but care must be taken to have no blottings or interlinings. When anything is deleted, it must be marked on the margin how many pages or lines are so blotted out, and that it was done by authority of a competent court; and this marginal annotation must be signed by the moderator and clerk. If anything has been omitted, the omission is, in like manner, supplied on the margin, and subscribed by the clerk.¹ It is incompetent for a kirk-session, or any inferior court, to erase the minute, or minutes, or any part of the minutes of its own proceedings at a former meeting. That can be done only by authority from its immediately superior court.²

Every kirk-session is represented both in the presby-
 tery of the bounds, and in the provincial synod,
 by one of its elders, who must be *bonâ fide* an
 Ruling elders.

¹ Act 9, Assembly 1706.

² Assembly 1817, Sess. 7.—Campbell, Synod of Merse and Teviotdale.

acting elder in the congregation in which he holds office. The representative is elected every half-year, within two months after the sitting of the synod ; and in case of death or demission—that is, resignation of his office as representative of the kirk-session—if a new election is made, it must take place within one month after these events. The elder carries with him an extract of his election, under the hand of the session-clerk ; and unless he produces this extract, first to the presbytery, and afterwards to the synod, his name is not admitted on the roll of these judicatories. The extract must also bear that the representative or commissioner is *bonâ fide* an acting elder in the congregation in which he holds office.¹

The session nominates its own clerk and its own officer.

SECTION II.

ON PETITIONS, REFERENCES, DISSENTS, COMPLAINTS, APPEALS, AND EXTRACTS.

THE practice in regard to the various particulars mentioned in the title of this section, is the same in all the different ecclesiastical courts, and may be briefly explained at once.

It is by petition that parties bring their cases before
 Petitions. the Church courts, or get their references, complaints, or appeals introduced.

All petitions to the Assembly, except petitions for the

¹ Act 12, Assembly 1776. Stewart of Pardovan's Collections, *passim* in Book i. title vii. 11, and Book iv. Assembly 1839, Act 12.

opinion of the procurator or for aid, or any other merely formal applications, which do not contain any statement on their merits, must be printed and laid on the Assembly's table in sufficient numbers for the use of members, on or before the first Monday of its sitting.¹ In regard to matters occurring during the sitting of the Assembly, or within ten days previously, papers must be printed and laid upon the table in time to admit of their being discussed during the sitting of the Assembly.² The expense is borne by the party bringing the matter under the notice of the Assembly.³

Petitions must be drawn up in proper and respectful language, otherwise they are rejected. They must also be competent in regard to what they desire.⁴

A petition, containing in the body of it that which should come before the court, not as a petition, but in a different form, cannot be received. A petition was rejected, which was in reality a complaint against an inferior court, because the court complained of was not thereby sisted as a party, and the matter of complaint should have been brought from it by appeal.⁵

A reference is made either *simpliciter*—that is, of the whole case, without any remark being made upon it—or upon some branch or circumstance of a case, where difficulty is felt. The subject of reference, and the resolution to refer, are transmitted to the superior court, along with the whole particulars of the case, or as much of these particulars as will make the reference be thoroughly understood.

References in the Assembly must be printed in suffi-

¹ Standing Orders, 1850.

² *Ibid.*

³ Act 10, Assembly 1834. Act 13, Assembly 1835.

⁴ Assembly 1765, Sess. 5.—Synod of Galloway.

⁵ Assembly 1756, Sess. 6.—Campbeltoun, Synod of Argyle.

cient numbers to afford a copy to every member of Assembly, unless they be on matters which do not affect the interests of parties in the cause. In that case there is no necessity for printing them. The references must be transmitted to the agent or clerk of Assembly on or before the Monday preceding the meeting of Assembly. When a cause is referred to the Assembly by an inferior court, without pronouncing judgment, the expense is borne by the parties mutually. The party refusing to pay his share of the expense is considered as having deserted the cause.¹

A reference cannot be made to the supreme court, if any court superior to that from which the reference proceeds meets before it. The Church does not allow the regular gradation of its courts to be departed from.² Members of the judicatory by which the reference is transmitted are not deprived of their status as judges in the superior court, when the reference is considered. They have, equally with other members of that court, a right to deliberate and determine upon the matter referred.³ But they ought not to be swayed in making a reference by a desire to retain that right.

When a case is referred in which parties are concerned, the parties having interest must be expressly cited to the superior court.⁴

When a reference is taken up, the first thing that is done is to consider if it comes properly before the court, or if there was ground for making it. If it is informal, or if it appears to be unnecessary, it is dismissed. If not,

¹ Act 10, Assembly 1834. Act 14, Assembly 1850.

² Act, August 30, Assembly 1639. August 3, Assembly 1643. Assembly 1821, Sess. 6, Presbytery of Dunfermline.

³ Hill's View of the Constitution, p. 59, 3d edition.

⁴ Assembly 1832, Sess. 6.—Dow, Presbytery of Dumfries.

it is sustained ; parties connected with it are heard in the first instance, and a deliverance upon it is given.

Any member of court may dissent from proceedings which he conceives to be contrary to the word of God, the acts of Assembly, or the received order of this Kirk, and may cause his dissent to be marked in the record. By so doing, he saves himself from any censure or danger that may arise from these proceedings.¹ The dissent must be given immediately when the judgment dissented from is pronounced ; and consequently can be given only by those who are present when that judgment is pronounced—other members of court having taken no part in the discussion, are not entitled to object to the deliverance.

A dissent cannot be received at a subsequent meeting of the court ; although, in the case of the General Assembly, other members besides the dissentient are allowed, at the subsequent meeting, to express their adherence to his dissent, immediately after the minutes are read, provided they were present when the subject was debated.³

In the Assembly 1828, a question arose as to dissents being received on the day subsequent to that on which the judgment dissented from was pronounced ; and it appeared that repeated instances had occurred of dissents having been so received. But the Assembly appointed a committee to search for precedents, with regard to the time and manner of giving in dissents from judgments of that house, and received from its committee a report to this effect : That it was long the invariable practice that dissents were entered on the

¹ Act June 4, Assembly 1664.

² Assembly 1827, Sess. 5.—Campbell, Presbytery of Kintyre.

³ Assembly 1819, Sess. 5.—Small, Synod of Perth and Stirling. Act 14, Assembly 1850.

day upon which the sentences dissented from were pronounced, leave in this case being given to members to adhere to the dissent on a subsequent day ; but that, in some recent instances, dissents had been entered on a subsequent day. The Assembly, on the suggestion of the committee, enjoined that the ancient practice should in future be enforced, and uniformly observed.¹

A dissentient cannot, merely on the strength of his dissent, appear in the superior court against the judgment from which he dissents ; nor can he be heard in the superior court in support of his dissent.² But in giving in his dissent, he may also intimate that he will lodge the reasons of his dissenting ; and in drawing up these reasons he has it in his power to state fully, in a temperate and respectful manner, the grounds upon which he cannot acquiesce in the judgment of the court.

Reasons of dissent are entered in the record only when they are offered *instanter*. When they are given in at a subsequent meeting, they are read in open court, and they lie *in retentis*.³ Instances, however, have occurred, in which reasons of dissent have been rejected, in consequence of their being so expressed as to be disrespectful to the court, or injurious to individuals.⁴

It is the privilege of a member of court not only to dissent from a judgment with which he is dissatisfied, but also to be able to carry it by complaint to a superior court, where it may be reviewed in all its circumstances. For this purpose he dissents and

¹ Assembly 1828, Sess. 5 and 9.

² Assembly 1757, Sess. 5.—Carlyle, Synod of Lothian and Tweeddale.

³ Act 7, Assembly 1730.—Assembly 1813, Sess. ult.—Ogilvy, Synod of Aberdeen.

⁴ Assembly 1803, Sess. 9 and ult.—Dickson and Hagart.

protests for leave to complain. If, instead of this, he were to protest and appeal as a party, the proceeding would be inept, and his object, to have the judgment with which he is dissatisfied, reviewed, would be defeated, because his appeal would be held to be incompetent.¹ To entitle him to carry his dissent and complaint to the superior court, he must also take instruments in the clerk's hands, and crave extracts.

The dissent and complaint are given in at the time the judgment complained of is pronounced, and cannot be received at a subsequent meeting.² The complaint is made to the next superior court, unless the General Assembly meets before it; in which case the complaint may be carried directly there. Reasons of dissent and complaint must be lodged in due time—that is, within ten days; and these, with all the papers belonging to the case out of which the complaint has arisen, are transmitted to the superior court.

It is optional to members of inferior courts, who may find it their duty to bring the proceedings of these courts under the review of the Assembly by complaint, either to furnish printed copies of them for all the members of Assembly, or to give a complete written copy of the whole papers and proceedings to the clerk of the Assembly on or before the Monday preceding the meeting of the Assembly.³

By a dissent and complaint, the proceedings of an inferior court are brought under the review of its superior, and the complainer or complainers, and all parties, are sisted at the bar of the superior court.

¹ Assembly 1827, Sess. 5; Campbell, Presbytery of Kintyre. Sess. 6; M'Gillivray, Synod of Argyle.

² Assembly 1819, Sess. 5; Small, Synod of Perth and Stirling.

³ Act 10, Assembly 1834. Act 14, Assembly 1850.

“It was in my remembrance,” says a highly respected authority, “a matter of doubt, whether, if there was no appeal by a party, a complaint from the minority of a court could have the effect of reversing the judgment of the majority. But the doubt has been completely removed by a number of decisions, in different years, conformable, in my opinion, to the nature and reason of the case; and it is now understood to be part of the law of the Church, that, upon a complaint from the minority of an inferior court, the court of review may dispose of the sentence complained of, in the same manner as if it had been brought before them by the appeal of a party.”¹ The cases marked below are only a few of those in which complaints alone have been the ground of a reversal of the sentences complained of.² One solitary instance is on record, in which a dissent and complaint were not held as sisting procedure, and no notice was taken of them in the deliverance of the General Assembly.³ This omission was the cause of a dissent being entered from that deliverance.

In judging of a complaint, the first thing to be done is to consider whether it has been rightly made, and whether there appears to have been ground for it. It is sustained or dismissed accordingly.

¹ Hill's View of the Constitution, p. 61, 3d edition.

² Assembly 1784, Sess. 9; Rose, Synod of Ross.—Assembly 1785, Sess. 8; Synod of Glasgow and Ayr.—Assembly 1789, Sess. 9, and ult.; Taylor, Synod of Glasgow and Ayr.—Assembly 1793, Sess. 4; Keith, Synod of Aberdeen.—Assembly 1794, Sess. 6; Chapman and Inglis, Presbytery of Perth.—Assembly 1798, Sess. 8; Legertwood.—Assembly 1815, Sess. 5; Fraser, Presbytery of Abertarph.—Assembly 1817, Sess. 7; Shiells, &c., Synod of Merse and Teviotdale.

³ Assembly 1828, Sess. 6; Downie and Monro, Synod of Ross.

A protest may be taken against the judgment of an inferior court; and it always precedes a complaint or an appeal. But a protest is not allowed to be taken against the sentence of the supreme ecclesiastical court. In some instances, particularly in the noted Assembly 1789, members not only dissented, but also protested against the decisions of the General Assembly. But in a remarkable case which occurred in the Assembly 1770, the practice was declared irregular and unconstitutional. The following is the statement in the abridgment of the acts of the Assembly of that year: "Sess. 8. The Assembly testifies their great dissatisfaction with Mr Thomas Stewart for his immoral conduct, and declares him to stand suspended *sine die* from the office of the ministry; and strictly prohibits him from exercising the said office, or any part thereof; and approves of the deed now granted by Mr Stewart, assigning to the Presbytery of Auchterarder the stipend, manse, and glebe of the parish of Crieff, and obliges him not to reside within the bounds of that Presbytery. A protest taken by some of the brethren against this sentence, and dissent entered thereafter by other members. The procurator for the Church reserved leave to himself to be heard to-morrow upon the protest. Sess. 9. The procurator for the Church heard upon the subject of the protest taken at last diet, and the entering of such a protestation by parties against the judgment of the supreme court declared irregular and unconstitutional." In the exciting times which preceded the secession of 1843, simple protests against judgments of the Assembly were more than once taken by parties at the bar; and again and again parties protested, for all remeid competent by law. But even then members only dissented.

An appeal is made to the next superior court by a party who thinks himself aggrieved by the judgment passed in his case by an inferior court. It is made immediately on the judgment being intimated to him ; he takes instruments in the clerk's hands ; extracts of the proceedings are craved by him to be forwarded to the superior court ; and reasons of appeal are stated by him at the time, and entered on the record, or must be lodged by him in writing, with the moderator or clerk of the court appealed from, within the space of ten days after the time of appealing.¹ It is usual for the court from which an appeal is taken to appoint some of its members to answer the reasons of an appeal ; and these answers are transmitted to the superior court along with the other papers.

Appeals to the General Assembly, together with the evidence adduced, must be printed in sufficient numbers to give every member of Assembly a copy, and must be lodged with the agent for the Church on or before the Monday preceding the meeting of Assembly, except when they relate to matters arising after that date. In causes, the expense of printing is borne by the appellant. Reasons of dissent, and reasons of appeal, and the answers thereto, and such papers as are not included in the record, are not required to be printed. The libel and defences, the petition or other initiatory step, and the answers thereto, with the sentences of the inferior courts, are considered as the record. In causes arising out of trials for licence or ordination, and matters relating to church ordinances, the parties are not bound to print the papers ; but if

¹ Act 8, Assembly 1694. Form of Process, ch. v. 1.—Assembly 1784, Sess. 7 ; M'Intosh, Presbytery of Inverness. Sess. 9, Henderson, Presbytery of Lochmaben.—Assembly 1807. Sess. 6 ; Wylie, Synod of Angus and Mearns.

papers are printed in such causes, the Standing Orders must be observed as to the number of copies for members, the size of paper used, and the time for lodging the papers with the clerk of Assembly.¹

All the members who do not dissent from the judgment of the inferior court, or complain of it, are sisted by the appeal at the bar of the superior court, and may appear in support of the judgment appealed from. But the superior court may limit the number of those who speak from the bar either for or against it.²

The General Assembly has ordered that in no case shall there be more than two speeches for each party at the bar, besides the reply, to which the appellant or complainer shall be entitled. And when there are more than two parties, there shall only be one speaker, and one speech for each, besides the reply; it being understood that where there is more than one complainer, each shall be considered as a different party only in case of its appearing to the Assembly that the complaints rest upon distinctly separate grounds. When a presbytery acquiesces in the sentence of a synod, it is not entitled to appear as a separate party at the bar of the Assembly. The members of the presbytery can be heard only as members of the synod.³

“The appeal, if conducted in the regular manner which the laws of the Church prescribe, stops the final execution of the judgment, brings the whole proceedings of the court which had pronounced the judgment under review, and sists the members at the bar of the superior court; that is, they are not entitled to deliberate and vote in the review of their own judgment; but they are

¹ Act 10, Assembly 1834. Act 14, Assembly 1850.

² Assembly 1824, Sess. 5; M'Farlan, Synod of Glasgow and Ayr.

³ Assembly 1832, Act 6. Assembly 1850, Act 14.

called to state, in such manner as they think proper, the reasons upon which their judgment proceeded; so that the sentence appealed from is commonly defended before the superior court, both by the party who considered it as favourable to his interest, and also by the members who concurred in pronouncing it."¹ The appellant speaks first, and has the right to reply.

A proper appeal sists procedure, or at least prevents the final execution of a sentence, till the appeal be discussed. Frivolous appeals may be disregarded.²

In regard to the settlement of a parish, that it may not be unnecessarily delayed, it is especially provided that, notwithstanding an appeal, a presbytery may proceed to all the previous steps, to take the presentee upon trials, and to serve the edict, leaving only the ordination or admission till the appeal be discussed.³

If *male appellatum* is found, in regard to an appeal, there is no cause before the superior court. If an appeal is found to be frivolous or vexatious, it is dismissed, and the judgment of the inferior court is usually affirmed at the same time. But this does not necessarily take place. The superior court, being a court of review, may consider the case that has been brought before them, and remit it to its inferior, with such instructions as seem to be necessary. If an appeal is sustained, a reversal of the sentence appealed from, or a reversal of such parts of the sentence as appear to be exceptionable, is pronounced.

It is competent to bring the proceedings of an inferior court before its superior, by petition and complaint, when power to appeal has been refused.⁴

¹ Hill's View of the Constitution, pp. 99, 100.

² Assembly 1798, Sess. 9; Orwell, Presbytery of Dunfermline.

³ Act 5, Assembly 1732. Form of Process, chap. v. 10.

⁴ Assembly 1836, Sess. 4 and 9; Eskdalemuir.

When there is neither complaint nor appeal, the judgment of the court is considered to be final ; and the case which is settled by that judgment cannot be opened up.

In the conduct of complaints and appeals, law agents or counsel are allowed to act, not only in the General Assembly, but also in presbyteries and synods. But it is specially provided, that lawyers who are constituent members of court, are not to act as counsel or procurators in any causes that come before the Assembly or the commissions thereof. And a similar rule will hold in the inferior courts.

Extracts are allowed to parties, on their applying for them immediately on the proceedings in which they are concerned being closed. They are not granted at a subsequent time to parties.³ Extracts from the minutes of inferior courts, when intended to be laid before the General Assembly, must be printed entire.⁴ And all papers, whether forming part of the record, or produced in evidence in any of the inferior courts, must be dated and numbered by the clerk of such court, and marked with his initials ; otherwise they cannot be received in the courts of review, unless upon special cause shown.⁵

Extracts are given from the minutes, when completed and approved of by the court, and either entered in the record or ready to be so. Extracts have been applied for from the jottings, from which the minutes are made up. In one case, extracts from the jottings were allowed, to enable parties to substantiate

¹ Assembly 1839, Sess. 5 ; M'Farlane, Presbytery of Haddington.

² Act 4, Assembly 1751. Act 8, Assembly 1783.

³ Assembly 1808, Sess. 6 ; Powis, Presbytery of Aberdeen.

⁴ Act 13, Assembly 1835. Act 14, Assembly 1850.

⁵ Act 10, Assembly 1834. Act 14, Assembly 1850.

their complaints.¹ In another case, extracts from the jottings were refused to a party, who thought that it concerned his cause to have them produced.² The only difference in the circumstances of the two cases was, that the parties in the first instance were members of court. If an opinion upon the point be hazarded, the second decision mentioned above, refusing extracts from the jottings, is, in all cases, the proper one. The register of proceeding, when filled up, and signed by the moderator and clerk, as the minutes of all the superior judicatories are required to be, is the only record of the court. It is the province of the moderator of every church judicature to take care that the record gives an accurate and faithful report of the mind and the proceedings of the court. For this purpose he causes the minute of every separate transaction to be read repeatedly in the hearing of the members, till he ascertains that it expresses their meaning; and it is not till the whole of the minutes, written out *in mundo*, have again been deliberately read, that his signature is attached to them. If the members neglect both their duty and their interest in attending to the minutes, they have only themselves to blame for the consequences of that neglect. They have ample opportunities, both of rendering the register correct and of satisfying themselves that it is so; and there does not appear to be any occasion for referring to jottings, which are not a record of the court, and which are in fact superseded as soon as the record is filled up.³

¹ Assembly 1812, Sess. 9; Bryce and Douglas, Synod of Aberdeen.

² Assembly 1823, Sess. 4; Marshall, Presbytery of Paisley.

³ Assembly 1813, Sess. 4; Mearns, &c., Synod of Aberdeen.— Stewart of Pardovan's Collections, book i. title 16; book iv. title 5.

SECTION III.

THE PRESBYTERY.

At present there are eighty-four presbyteries in the Church of Scotland.

“As the General Assembly has the power of disjoining and erecting presbyteries at its pleasure, their bounds may be altered, or their numbers increased, according to the change of circumstances.”¹

To have a new presbytery erected, or to have one or more parishes disjoined from one presbytery and annexed to another, a petition is presented to the General Assembly, or a representation is made to it, setting forth the circumstances which would render the attainment of these objects desirable. The Assembly makes the necessary inquiries, and judges accordingly.

“A Presbytery consists of the ministers of all the parishes within the bounds of that district, of the professors of divinity, if they be ministers, in any university that is situated within these bounds, and of representatives from the kirk-sessions in the district. Every kirk-session has the right of sending one elder. So that, unless there be a collegiate charge, or a university within the bounds of the district, the number of ministers and elders in any meeting of presbytery may be equal.”

¹ Hill's View of the Constitution, p. 49. Act 4, Assembly 1699. Act 13, Assembly 1703. Act 10, Assembly 1707. Act 5, Assembly 1724, &c. Act 8, Assembly 1830. Act 8, Assembly 1834. Acts 6 and 7, Assembly 1836.

The roll is made up every half-year, at the first meeting after the provincial synod, when new elders are returned, and the extracts of their election are produced. A new moderator is then also chosen. He must be a minister. The election is usually a nominal one, proceeding according to what may be called a fixed and invariable rule, that the next in succession on the roll—that is, the next according to the date of his ordination—takes the chair. An attempt to infringe this rule is never made without disturbing the harmony of a presbytery. It may be questioned whether, when consuetude is of such long standing, it is in the power of a presbytery to elect as moderator any member out of his order, and without his concurrence. Except in the case of a kirk-session, where the minister of the parish is *ex officio* moderator, it seems intended by the constitution and the laws of the Church, that the different judicatories should actually elect their moderators. In the absence of a moderator of a presbytery, his predecessor in the chair presides; and failing him, “the eldest minister.”¹

After the presbytery has been constituted, and the roll has been called, the minutes of last meeting are read. If alterations require to be made on them, the alterations must then be proposed and considered. If the presbytery is satisfied with the minutes, they become the record of the last day’s proceedings, and are signed by the moderator. If they offer any subjects for notice, it is usual to take these up in the first place in the order in which they occur.

At the first meeting after the meeting of the provincial synod, the minutes of synod, which are required to be

¹ Stewart of Pardovan’s Collections, book i. title 9.

transmitted to all the presbyteries within the bounds, are read over.

A presbytery has to judge in the references for advice, the complaints and appeals that come from the Business. kirk-sessions within the bounds ;¹ to examine schoolmasters on their appointments ;² to provide for the annual examination of the parochial and other schools of the district ; and to make an annual report on this subject to the General Assembly.³ It belongs to presbyteries to grant licences to preach the gospel, to judge of the qualifications of those who apply for them, and to report to the Assembly annually what probationers are residing within their bounds.

Before a student is enrolled as a student of divinity, Students examined. he must be examined by the presbytery within the bounds of which he resides, upon literature, science, and philosophy, particularly upon Greek and Latin, and upon his knowledge of the Christian religion as it is exhibited in the catechetical standards of the Church. He must produce certificates of having gone through a regular course of attendance at one of the universities, in Greek, logic, moral and natural philosophy, and of having attended the Latin class and the mathematics for at least one session, and made satisfactory proficiency as a Latin scholar.⁴ And every year of his attendance at the hall he must be again examined by the presbytery upon his attainments in divinity, church history, Greek, and Hebrew. He must annually present to the professors of divinity a certificate of his having been examined by the presbytery on the progress

¹ See Section II. of this work.

² Act of Parliament, 43 Geo. III. cap. 54.

³ Act 12, Assembly 1799. Act 7, Assembly 1820.

⁴ Act 14, Assembly 1843. Act 18, 1845.

made by him in his studies, and of their satisfaction with the same.¹

A presbytery is not entitled to examine a student resident in Scotland, as a candidate for enrolment as a student of divinity, unless he is known to some member thereof as having had his chief residence within their own bounds for the previous six months, or produce a satisfactory certificate from that presbytery within whose bounds he has chiefly resided for such period.²

Students not resident within the bounds of the Church of Scotland, who have attended a university in Scotland, must be examined before their enrolment as students of divinity, by the presbytery within whose bounds the university at which they have studied is situate. The examination may be either at the end of the last session of their course of philosophy, or immediately before the commencement of their first session in divinity.³

When a student is proposed for trials, and when any Proposed for trials. of the preliminaries respecting his being taken on trials are discussed, the presbytery must be alone. The motion for taking him on trials lies on the table till the next ordinary meeting, when the proper certificates in his favour are to be produced, and he directed to be present. It should be his business, in the mean time, to wait upon the members of the presbytery that they may have an opportunity of conversing with him in private.

A student may be proposed for trials during the currency of his last session at the divinity hall; but in that case, if the session is to be claimed as one of regular attendance, an additional certificate, of his having at-

¹ Assembly 1837, Acts 8 and 9.

² Act 9, Assembly 1850; Interim Act.

³ Act 15, Assembly 1835.

tended during that session, must be produced to the presbytery before his trials are concluded.

It is required that a student who is proposed for
 Qualifica- trials shall have completed his twenty-first
 tions. year.

His attendance at the divinity hall may be regular three sessions, and completed in a fourth ; or regular for two sessions, and completed in five. By an act recently passed, all students of divinity are required to give at least two sessions of regular attendance at the divinity hall, and two sessions of regular attendance at the classes of Church History and Hebrew. It is not now competent to complete a theological course otherwise than has been stated.¹

The certificate or certificates, which he produces from
 Certificates. the professor or professors of divinity under whom he has studied, must not only bear that his attendance has been such as is stated above, but also that he has delivered an exegesis in Latin on some controverted head in divinity, a homily in English, an exercise and addition on some portion of the original text of the New Testament, a critical Hebrew exercise on some portion of the original text of the Old Testament, a lecture on some large portion of Scripture, and a popular sermon ; and that his conduct has been suitable to his views in life. He must also produce certificates of attendance, during two of his regular sessions, on the classes of Church history and Hebrew. These certificates are recorded at full length in the minutes of presbytery.²

¹ Act 8, Assembly 1813. Act 8, Assembly 1826. Act 15, Assembly 1856.

² Act 8, Assembly 1813. Act 9, Assembly 1833. Act 10, Assembly 1836.

The character of the student proposed for trials must be in every respect satisfactory to the presbytery. He ought for the year preceding to reside chiefly within the bounds of the presbytery, that he may be personally known to its members ; or he must bring the most ample testimonials from the presbytery in whose bounds his residence has chiefly been during that term.

The student is examined strictly and privately by the presbytery on his knowledge of the Greek and Latin languages, and of philosophy and theology.

The examinations of students, whether for the hall or for probationary trials, may be by a committee appointed annually, or by the presbytery, or by both. The committee should meet on a different day from that on which the presbytery meets, so as to allow due time for the examination. A detailed minute of the committee's proceedings should be kept, and given in to the presbytery along with a written report on the whole examination. Some part of the examination should be conducted in writing ; and the written questions and the written answers should be given in to the presbytery along with the committee's minute and report. But these documents are not intended to be engrossed in the minutes of presbytery.¹

If the presbytery is of opinion that the student is duly qualified in these particulars, this opinion is recorded in the minutes ; the clerk is ordered to write circular letters to the different presbyteries within the bounds of the synod, informing them of the presbytery's intention to take the student upon trials, and bearing that the requisite certificate or certificates have been regularly produced ; and nothing further is done till the synod authorises the presbytery to proceed.

Circular
letters.

¹ Act 14, Assembly 1856.

Leave cannot be asked from a synod to take a student upon trials, until he has undergone the previous trials required by Act 8, 1813.¹

The circular letters must be written at least two calendar months before the meeting of the synod. In those synods which meet only once a-year, a student is entitled to have the circular letters written half a year sooner than would otherwise be competent.

The leave of the synod being obtained to proceed with the trials of the student, the following is the order in which they are required to be taken :—1st, Catechetic trials on divinity, chronology, and Church history ; 2d, A trial on the Hebrew and Greek languages ; 3d, An exegesis in Latin on some controverted head in divinity ; 4th, A homily in English ; 5th, An exercise and addition ; 6th, A lecture on some large portion of Scripture ; 7th, A popular sermon.

It is the practice of many presbyteries to require the student to draw up an account of some portion of the history of the Church, besides subjecting him to the catechetic trials on Church history. On the subject of the several discourses delivered by the student, it is competent for the presbytery to examine him if it sees cause.

The trials being finished, the presbytery takes a conjunct view of them, and if dissatisfied with them, remands the student to his studies, or appoints new trials for him to undergo, or refuses altogether to license him to preach the gospel. Its opinion, whether favourable or unfavourable, is recorded. If it is favourable, the following questions are put to him :—

Judgment
of the
presbytery.

¹ Assembly 1824, Sess. 5 ; Macdonald, Synod of Ross.

1. Do you believe the Scriptures of the Old and New
 Questions. Testament to be the word of God, and the only
 rule of faith and manners ?

2. Do you sincerely own and believe the whole doctrine of the Confession of Faith, approved by the General Assembly of the National Church, and ratified by law in the year 1690, and frequently confirmed by divers acts of Parliament since that time, to be the truths of God, contained in the Scriptures of the Old and New Testament ; and do you own the whole doctrine therein contained as the confession of your faith ?

3. Do you sincerely own the purity of worship presently authorised and practised in this Church, and asserted in Act 15th, General Assembly 1707, entitled, Act against innovation in the worship of God ; and do you also own the presbyterian government and discipline now so happily established in this Church ; and are you persuaded that the said doctrine, worship, and discipline, and Church government, are founded upon the Holy Scriptures, and agreeable thereto ?

4. Do you promise that, through the grace of God, you will firmly and constantly adhere to, and in your station, to the utmost of your power, assert, maintain, and defend the said doctrine, worship, and discipline, and the government of this Church, by kirk-sessions, presbyteries, provincial synods, and general assemblies ?

5. Do you promise that, in your practice, you will conform yourself to the said worship, and submit yourself to the said discipline and government of this Church ; and you shall never endeavour, directly or indirectly, the prejudice or subversion of the same ?

6. Do you promise that you shall follow no divisive course from the present establishment in this Church ?

7. Do you renounce all doctrines, tenets, or opinions whatsoever, contrary to or inconsistent with the said

doctrine, worship, discipline, and government of this Church?

8. Do you promise that you will subject yourself to the several judicatories of this Church, and are you willing to subscribe to these things? ¹

Having given satisfactory answers to these questions, the student subscribes the formula, in which
 License. the substance of the questions is embodied. The act against simony, Act 8, Assembly 1759, is then read to him in presence of the presbytery; the moderator is appointed to license him to preach the gospel; and the clerk is ordered to furnish him with an extract of his license.²

The formula must be subscribed before license is obtained; and presbyteries are not allowed to use any other formula but that which is prescribed by Act 10, Assembly 1711.³

Students, who have attended Protestant universities not within the bounds of this Church, may be proposed for trials. They must produce satisfactory testimonials from the professors of these universities. The time of their attendance is computed in the same manner as if they had prosecuted their studies in any of the universities within the bounds of this church. But they must have been at least six months in Scotland before they are admitted to the trials previous to the writing of the circular letters.⁴

Dissenting teachers applying to be taken on trials for license, are not admitted to trials without the
 Dissenters. knowledge and authority of the supreme ecclesiastical judicatory.⁵

¹ Act 10, Assembly 1711.

² Act 8, Assembly 1813.

³ Assembly 1711, Sess. 13; Craig, Presbytery of Auchterarder.

⁴ Act 8, Assembly 1813, section 7.

⁵ Assembly 1805, Sess. 9; Eadie, Synod of Glasgow and Ayr. As-

A blind person cannot be taken on trials, without first consulting the General Assembly upon the subject.¹

In the case of a person affected with deafness applying to be taken on trials, reference was made to the General Assembly, before the synod allowed the presbytery to proceed.²

It is competent to a presbytery, at the request of a student before them, to transfer to another presbytery the receiving his public trials, or any part thereof. But this transference cannot be made if leave has not been obtained from the synod to take the student upon trials.³

Probationers residing for two months within the bounds of any presbytery, are required, within that time, to present their license to the presbytery, that their names, and the names of the presbytery which licensed them, may be marked in the register. It is important to probationers that this enactment should be attended to ; and it will be a proper act of kindness on the part of ministers in whose parishes they reside, to remind them of their duty in this respect. Presbyteries are required to report annually to the General Assembly the names of such students as are presently under trials before them, and the names of all probationers residing within their bounds.⁴

sembly 1824, Sess. ult. ; Muir, Synod of Dumfries. Assembly 1833, Johnston, Presbytery of Edinburgh ; Commission of Assembly, 3d June 1834 ; Corson, Presbytery of Irvine.

¹ Act 6, Assembly 1761. Assembly 1815, Sess. 5 ; Thomson, Presbytery of Glasgow. Assembly 1829, Sess. 9 ; Maclean, Presbytery of Mull. Assembly 1856, Sess. 8 ; Corbet, Presbytery of Aberdeen.

² Assembly 1823, Sess. 6 ; Gordon, Synod of Aberdeen.

³ Act 8, Assembly 1813, Sess. 6. Assembly 1824, Sess. 5 ; Macdonald, Synod of Ross.

⁴ Act 3, Assembly 1697. Act 9, Assembly 1736. Niven, Assembly 1849, Sess. 5.

No process against a minister or probationer can be instituted in a kirk-session. It belongs to presbyteries to receive and investigate charges against their characters.¹

Much caution is requisite in entering on such a process, on account of the station of a minister, and the effect of the process on his usefulness. It is not commenced unless there be a complaint given in against a minister, with some account of its probability, by a person or persons of good report, who undertake to make out the libel; or unless the *fama clamosa* against a minister be so great, "as that the presbytery, for their own vindication, see themselves necessitate to begin the process, without any particular accuser."

When there is such a *fama clamosa*, the presbytery's first business is to inquire into the rise, occasion, broachers, and grounds thereof. It is not competent for a presbytery to refuse to receive a libel, without inquiring into the grounds thereof.²

If it appears to a presbytery, after this inquiry, that there should be a process against a minister, and if no private party come forward to institute it, they resolve to serve him with a libel. Before coming to this resolution, they should be satisfied that there is evidence of the facts charged against him. A libel cannot be sustained which rests only upon hearsays.³

A presbytery is not entitled to begin a process against a minister, or to serve him with a libel, unless there is a *fama clamosa* against him.⁴

¹ Form of Process, chap. vii. 1. Act 9, Assembly 1745. Assembly 1814, Sess. 9; Malcolm, Presbytery of Auchterarder; Tulloch, Synod of Ross.

² Assembly 1832, Sess. 5; Neilson, Presbytery of Dunkeld.

³ Assembly 1755, Sess. 9; Mackenzie, Presbytery of Dingwall.

⁴ Assembly 1797, Sess. 5; Butter, Synod of Perth and Stirling.

The conduct of a minister may be inquired into by his presbytery, when it is considered to have been in any way incorrect. Such an inquiry is necessary in order to serve him with a libel; and it may often prevent that ulterior step, either by bringing the minister to an acknowledgment of his error, or by affording him an opportunity of giving to the presbytery a satisfactory explanation of his conduct. But a minister cannot be proceeded against except by serving a libel upon him. It is not competent to admit to proof facts stated against him in the way of petition; nor is any sentence pronounced against him legal, which has not been preceded by a regular libel.¹

When a presbytery shall resolve to libel a minister or probationer, a complaint or appeal may be taken against such resolution; but neither that complaint or appeal, nor any other, either when the presbytery or any other party shall be libeller, prevents the cause from going on till the relevancy is determined. All such complaints and appeals, and the judgments on the relevancy, if appealed from, are disposed of at the same time.² The General Assembly 1850, after much consideration of the subject, transmitted as an overture to presbyteries, and at the same time passed it into an interim act, that appeals and complaints on the relevancy of a libel shall not prevent the libel from being taken to probation. The returns to overtures in 1851 showed that a majority of presbyteries approved of the proposal, and the Assembly enacted accordingly. It is now, therefore, a standing law of the Church, that proceedings in cases of libel shall not be stayed by any complaints or appeals either on the relevancy or in

¹ Assembly 1818, Sess. 8; and Assembly 1826, Sess. 4—Russels, Presbytery of Lochcarron.

² Act 11, Assembly 1835.

the course of probation. All questions relating to libels, in which presbyteries are prosecutors, excepting those which involve error in doctrine, are consequently to be brought up at once to the superior court; and cases affecting the character of a minister, instead of being protracted for years, may be determined within six or twelve months at most. To give greater security against injustice being done to parties by this more rapid mode of proceeding, and to lessen the danger of irrelevant matter being introduced into libels, it has also been enacted that all libels on ministers or probationers shall be submitted to the procurator for revision before being served.¹

It appeared to the General Assembly in one instance of an appeal from a resolution to libel, that the conduct of the minister had been imprudent and irregular, rather than criminal, and that therefore it was unnecessary to give him a libel. By appointment of the Assembly, he was rebuked by the moderator.²

In drawing up a libel, care must be taken, not only to state distinctly the facts charged against a minister, but also to condescend on the time and place when and where the facts are alleged to have been committed. The time mentioned should in no case exceed the period of one year.³

A libel raised by a presbytery, must be subscribed by the moderator and clerk.⁴

When a libel against a minister has been duly framed and considered by the presbytery, an order is given to cite him before it, and to furnish him with a full copy of the

¹ Act 9, Assembly 1851.

² Assembly 1765, Sess. 6; Park, Presbytery of Hamilton.

³ Assembly 1779, Sess. ult.; Nivison, Presbytery of Penpont.

⁴ Assembly 1812, Sess. 5; Playfair, Presbytery of St Andrews.

libel, and with a list of the witnesses' names to be led for proving thereof.

If the minister is present, a citation to him *apud acta* is peremptory. A citation left at his dwelling-house must be in writing, bearing the date when given, and the names of the witnesses to the giving thereof. It must be left at least ten free days before the day of compearance; and a regular execution of the citation in writing must be returned by the officer to the presbytery. If the minister cited fails to appear, a new citation is given to him at his own church, when the congregation is met; and if this also is ineffectual, he is holden as confessed.

The purpose of furnishing the minister with a copy of the libel, and a list of the witnesses' names, is to give him an opportunity of answering the libel, and of preparing his defences, and his objections against witnesses. Hence it is not competent to withdraw the original libel, and to present a new one.¹ If a new one is deemed necessary, the original libel must be discharged.² In like manner, it is not competent, during the prosecution of a libel, to serve an additional list of witnesses, and so prorogate the term for concluding the proof.³ But it has now been enacted, and effect has been given to some parts of the Act, that along with his defences the minister libelled shall lodge a list of his witnesses; and that in the event of special defences being proponed by him, which, if substantiated, would enable him to elide the libel, the libellers

¹ Assembly 1805, Sess. ult. ; Keilor, Synod of Perth and Stirling.

² Commission of Assembly, 1st June 1836 ; Parker, Synod of Glasgow and Ayr.

³ Assembly 1785, Sess. 6 ; Maclagan, Synod of Merse and Teviotdale. Commission of Assembly, 31st May 1836 ; Case of Small Isles.

shall be entitled to a proof in reply, and shall serve the accused, before commencing the proof in the cause, with a list of the additional witnesses to be adduced by them for that particular purpose. By the same Act it is settled that a member of presbytery may be examined as a witness; but the particular point on which it is proposed to examine him must first be stated to the presbytery, and they judge whether they will allow the member to be examined. The member examined is not thereby disqualified from sitting as a judge in the case.¹

The list of witnesses must be regularly served on the person libelled, otherwise the libel cannot be proceeded with.²

If the minister appears according to citation, the libel is read over to him. His answers are also read. The relevancy of the libel is then discussed. This is indispensably the first proceeding. A libel cannot be taken to probation before the relevancy is discussed.³ Neither can judicial evidence be taken before a libel has been served.⁴

The irrelevancy of some parts of a libel does not render the whole irrelevant, and does not stop procedure upon the other parts which are relevant.⁵

If the libel is found relevant, endeavours are used to bring the minister to a confession; and if he confess, and the offence be of a scandalous nature, the presbytery *instantanter* depose him *ab officio*, and appoint him to make public profession of his repentance.

¹ Act 12, Assembly 1850. Assembly 1657, Sess. 8; Kilmalcolm.

² Assembly 1816, Sess. 8; Malcolm, Synod of Perth and Stirling.

³ Assembly 1793, Sess. 8; Dallas, Synod of Ross.

⁴ Assembly 1834, Sess. 5; Niven, Synod of Perth and Stirling.

⁵ Assembly 1806, Sess. 5; Carmichael, Synod of Perth and Stirling. Assembly 1812, Sess. 5; Playfair, Presbytery of St Andrews. Assembly 1825, Sess. 8; Macleod, Presbytery of Kintyre.

If the fact charged is denied after the relevancy is found, probation follows.

The minister libelled has a right to state objections to questions or witnesses in the course of the Probation. Probation, and appeals or complaints with regard either to the admissibility of witnesses or the competency of questions are recorded, so as to be judged of ultimately by the superior court ; but they do not sist procedure as heretofore, till the appeals and complaints are disposed of.¹ In a report from a committee on the form of process approved of by the General Assembly, and inserted in the Acts of Assembly, it is required that the accused shall be bound to lodge defences, along with a list of witnesses, within twenty days after the libel has been served upon him ; or, otherwise, he shall be held to have no defence excepting a simple denial of the libel.² Persons against whom relevant objections are made, and offered to be immediately proved, are not admitted as witnesses.³

The minister has also a right, after probation is finished, to offer a proof of facts and circumstances tending to his exculpation.⁴

If the libel is proven, the presbytery proceed to censure, as in the case of a confession.

If the errors charged against the minister are not gross, or striking at the vitals of religion, he is to be dealt with tenderly, and the synod or General Assembly may be advised with.

If the libel respect a multitude of smaller things laid together, the presbytery may see cause to order a pres-

¹ Act 9, Assembly 1851.

² Act 12, Assembly 1850.

³ Assembly 1815, Sess. 9 ; Lockerby, Presbytery of Glasgow.

⁴ Assembly 1812, Sess. 5 ; Playfair, Presbytery of St Andrews. Assembly 1825, Sess. 8 ; Macleod, Presbytery of Kintyre.

byterial visitation of the parish to which the minister belongs.

By Act 16, Assembly 1706, presbyteries are required to hold frequent visitations of the parishes within their bounds. The practice, however, has fallen into desuetude as a general measure. Attempts were made some years ago to revive it, and two or three presbyteries actually commenced it to a certain extent. But nowhere now are presbyterial visitations regularly held. The conviction is strong, that it is neither necessary nor expedient to do so in the altered circumstances of the country, and that the advantages to be derived from such visitations will be greater when they are reserved for special occasions. The civil concerns of a parish, which were considered as part of the business of a presbyterial visitation, cannot be taken up in a summary way, and rarely need to be interfered with. Its religious concerns are the great objects of a presbytery's care. While there is nothing to excite apprehension of these being neglected, the interference of the presbytery is not required. And the experience of recent years has not established that regular presbyterial visitations are an effectual means of stimulating the diligence of the office-bearers of the Church, and promoting the interests of religion among its members.

It is always a delicate and a difficult matter to examine into a minister's personal or official conduct; and the disapprobation expressed by the Assembly 1796 of the manner in which a presbyterial visitation for this purpose was managed, will make presbyteries cautious how they proceed in the business.¹

When a presbyterial visitation of a parish is appointed, notice of it is given from the pulpit ten free days before

¹ Assembly 1796, Sess. 5; Gillanders, Synod of Angus and Mearns.

it takes place; and the heritors, elders, and whole congregation, are summoned to be present on the day of the visitation, and to acquaint the presbytery if they know anything amiss in their minister, elders, and other office-bearers in the parish. A presbyterial visitation ought not to be held without public worship.¹ After public worship, the elders are examined upon oath,² and the heads of families are interrogated in general. The visitation is concluded with prayer.³

It is not till a libel has been found to be proven, that any sentence can be passed upon the person libelled. During the dependence of a process against a minister, a presbytery is not entitled either to suspend him, or to prevent him from dispensing the ordinances of religion in his parish.⁴ And whatever may come out in the course of the probation, a presbytery is not entitled to inflict any censure for which the libel does not conclude, more particularly if the libel is found to be not proven.⁵

When a minister is assoilzied, the proceedings against him are not allowed to remain either in the record or *in retentis*.⁶

If deposition is the sentence that follows, the act of
 Deposition. depositing is always preceded by prayer. The church of the deposed minister is declared vacant from the day and date of the sentence of deposition, and the usual steps upon occasion of a vacancy are taken.

¹ Assembly 1839, Sess. 5 ; Humbie. ² Assembly 1646, Sess. 10.

³ Act, March 26, Assembly 1596. Act, Sess. 23, Assembly 1638. Act 10, Assembly 1646. Act 16, Assembly 1706. Stewart of Pardovan's Collections, book i. title 13.

⁴ Assembly 1785, Sess. 6 ; M'Lagan, Presbytery of Selkirk. Assembly 1812, Sess. 8 ; Davie, Synod of Angus and Mearns.

⁵ Assembly 1793, Sess. 8 ; Dallas, Synod of Ross.

⁶ Assembly 1818, Sess. 5 ; Clark, Presbytery of Inverness. Sess. 9 ; Lockerby, Presbytery of Glasgow.

The sentence of deposition cannot be pronounced by a presbytery in absence of the minister to be deposed, unless by authority of the General Assembly.¹ In 1793, a case of libel came before the General Assembly, by appeal from the presbytery of Kirkcudbright. Neither the sentence of the presbytery nor the grounds of appeal are given. But the finding of the presbytery was to the effect, that the minister libelled was not to be deposed. Some of the elders and heads of families of his parish were the appellants. He himself was incarcerated by the civil power. An objection was taken to proceeding with the appeal in his absence. But this objection was overruled; and the Assembly, notwithstanding his absence, reversed the sentence appealed from, and deposed him from the office of the holy ministry.²

A minister deposed for immorality cannot be restored to his former charge, in any circumstance whatsoever, without the special authority of the General Assembly appointing it.³

If a minister demits his charge, the presbytery judges whether the demission should be accepted or not.⁴ It is not competent for the presbytery to accept of the demission, if the minister has pursued schismatical and devisive courses.⁵ In that case, the presbytery consults the commission, as it sees cause, calls the minister to account, proceeds against him by way of libel, and censures him even to deposition.⁶

¹ Assembly 1755, Sess. ult; Moncrieff, Presbytery of Zetland Assembly 1836, Sess. 10; Catrine, Presbytery of Ayr.

² Assembly 1793, Sess. 7; Macnaught, Presbytery of Kirkcudbright.

³ Assembly 1748, Sess. 6; Declaration in the case of Adam, Presbytery of Glasgow.

⁴ Assembly 1799, Sess. 6; Ewing, Presbytery of Edinburgh.

⁵ Assembly 1799, Sess. 6; Innes, Presbytery of Stirling.

⁶ Act 6, Assembly 1708. Act 4, Assembly 1739.

When a parish becomes vacant by the death of the minister, the brethren who attend his funeral assemble after it, and appoint some one of their number to preach in the church of that parish on the Lord's day following, and declare the church vacant from the day of the minister's death. They further settle among themselves such supplies of ministerial service for the vacant parish as may be necessary till the ordinary meeting of presbytery. It is a practice also in some quarters to direct the minister who preaches to intimate the vacancy to the patron. But properly this is to be done by the presbytery clerk, when he has received instructions to that effect. The assembled brethren make a minute of their proceedings, and report them to the presbytery. The presbytery never fails to approve of them and to record them, when they are conducted in the manner stated above. If the requisite intimations have not been given by the brethren, the presbytery orders them forthwith.

Supplies are usually given once a fortnight for vacant parishes in the country. In towns it is frequently found to be expedient to give them oftener. They are appointed by consulting the convenience of members, or, which is the better way, by following the order of the roll, leaving it to members to make such arrangements with one another in private, as may enable them to obtemper the appointments of the presbytery with the least inconvenience to their parishes or themselves. Vacant parishes should be regarded with great consideration by presbyteries, and the ministers who are appointed to give the supplies should perform that duty personally. It is very material to attend to this.

The presbytery, during vacancies or suspensions, has the right of free entrance to the churches within its

bounds. The custody of the keys of churches lies in these cases with the presbytery.¹

When a parish has remained vacant for six months, dating the vacancy from the day of the minister's death, or deposition, or demission, or translation to another parish, and no presentation has been lodged with the presbytery, or with the moderator, or clerk, the right to present to the vacant parish belongs to the presbytery *tanquam jure devoluto*.²

A patron, in order to present to a vacant parish, should qualify to Government, and an extract of his having so qualified should be given in to the presbytery along with the presentation; otherwise, according to strict interpretation of the law, it cannot be sustained. The practice is lax in this respect.

If a presentation is received by the moderator of a presbytery, and an ordinary meeting of presbytery takes place within a month from the date of his doing so, he retains the presentation till that meeting, and then lays it before the presbytery. But if the ordinary meeting does not happen within the period mentioned, the moderator is required, within three days after receiving the presentation, to call a meeting of presbytery, to be held on a day not less than ten, nor more than fourteen days, from the time of calling it, for the purpose of receiving, examining, and judging of the presentation.³

A presentation must be in favour of a licentiate of this Church, who qualifies to Government, and who is willing to accept of the presentation. Hence, besides the presentation, there must likewise be laid on the presbytery's table a letter of acceptance from the presentee, an

¹ Assembly 1828, Sess. 8; Presbytery of Linlithgow.

² Act 7, first Parliament James VI. 1567. Act 2, twelfth Parliament James VI. 1592, c. 115. Act Queen Anne, 1712, c. 12.

³ Act 11, Assembly 1850.

extract of his having qualified to Government, and, if he is not already an ordained minister in the occupation of another charge, an extract of his license to preach the gospel, and a presbyterial certificate. If the presentation is in favour of a minister who has for some time resided furth of Scotland, sufficient evidence must be produced that he retains the status and character of a minister in connection with the Church of Scotland. If the presbytery is satisfied with the documents, they are sustained; otherwise they are rejected, and intimation of this is made to the patron. But a reasonable time is allowed to the presentee to supply any defect that may be found in them.¹

It is not competent for the heritors of a parish to object to a presentation.² The presbytery are the judges whether it is to be sustained; and, unless they find the presentee disqualified, they are "bound and astricted" to receive him on the presentation of an undoubted patron.

The presentee is appointed to preach in the vacant church on at least one Sabbath-day, and there-
 Presentee. after on a week-day, when a committee of two ministers of the presbytery, or more, shall be present. Intimation of the days of preaching is to be given to the congregation, by edictal notice, on the Sabbath immediately preceding the first of them. On the week-day the manuscripts of all the sermons delivered by the presentee, in consequence of the above appointment, are given up to the committee in order to be laid, if need be, before the presbytery. When the presbytery fixes on what days the presentee shall preach, it has also to appoint the day on which a call will be

¹ Assembly 1849, Sess. 4; Niven. Act 12, Assembly 1856.

² Assembly 1797, Sess. 4; Nivison, Presbytery of Penpont.

³ Act of Parliament 1592; Hill's View of the Constitution, p. 38.

moderated in to him. And the same edictal notice mentioned above will bear that a meeting will take place in the church on such a day, for moderating in a call to the presentee, and receiving objections to his settlement, if such shall be offered. The day for moderating in the call must be at least ten free days from the Sabbath-day on which the presentee preaches.¹

The attendance of a committee of presbytery on the foresaid week-day is not imperative in the case of presbyteries of the Northern and Western Isles. If no member of these presbyteries is present on the said occasion, the presentee leaves his manuscript discourses, sealed up, with the session-clerk.²

At the meeting for moderating in a call, a sermon is Moderating in a call. preached by the member of presbytery who is appointed to preside: the people are informed, at the conclusion of public worship, of the presentation that has been lodged; and they are invited to subscribe a written call to the presentee to be their minister, and to encourage him by expressing their willingness to receive him in that capacity. A call not being regularly moderated in has been declared sufficient ground for annulling the proceedings of presbytery subsequent to the sustaining of a presentation.³ The call being signed by such as choose to affix their names to it, intimation is made that if members of the congregation have objections to offer to the settlement of the presentee, the presbytery are ready either then, or at their next meeting, to receive the same in writing, or to write down the same in their minutes.

The objectors are required to be personally present. They may either state their objections *vivâ voce*, or lodge them in writing at that meeting; or

¹ Act 12, Assembly 1856.

² Ibid.

³ Assembly 1844, Sess. 5; Macintosh, Presbytery of Chanonry.

they may intimate that they will give them in at the next meeting. If objections are given in at the first meeting, additional objections are not admitted from the same parties at a subsequent meeting. If no objections are offered, and no intimation is made of bringing forward objections at a subsequent meeting, it is understood that objections cannot afterwards be competently made. The presbytery sustains the call, and proceeds to the ulterior steps for the settlement of the presentee. If a subsequent meeting is required for receiving objections, it must take place not more than fourteen days after that for moderating in the call.

When objections are given in, the presbytery may consider and dispose of them at once, or may adjourn the consideration of them to a future day. The objections must be personal to the presentee, in regard to his ministerial gifts and qualities, either in general, or with respect to the particular parish to which he has been presented. The objections must not be such as infer matter of charge against him, which should be followed out according to the forms and discipline of the Church—that is, by libelling him. If the objectors think that they have matter of charge of this kind against him, they act unfairly by the presentee in insinuating it in the form of an objection which the presbytery cannot receive, and which the presentee, therefore, has it not in his power to repel.

The relevancy of the objections is the first point to be attended to; and if any are found relevant, and if the facts on which relevant objections bear to be founded are denied, a conjunct probation is allowed to the parties. A judgment is pronounced on each objection separately, whether as relevant or irrelevant, or as proven or not proven.

Objections may be made to the discourses preached by

the presentee,—in which case the manuscripts given to the committee are laid before the presbytery. In considering the objections, the presbytery is required to cognosce and determine on them judicially—that is, to be guided by the evidence adduced in support of them. The presbytery is also required, in judging of the objections, to have regard to the circumstances and condition of the particular parish, to the spiritual welfare and edification of the people, and to the character and number of the persons by whom the objections are preferred.

If the objections are proven, the presbytery declares the presentee not fit and qualified, in respect of said objections, to take the pastoral charge of the parish to which he was presented, and pronounces a deliverance refusing to proceed with his settlement as minister of that parish. An extract of this deliverance is ordered to be immediately transmitted to the patron.

If the objections are not proven, the presbytery, after finding this in regard to each of them separately, pronounces a judgment dismissing the objections, sustaining the call, and resolving to proceed to the settlement of the presentee.

Appeals on any of these proceedings do not sist procedure till it arrives at the final step.¹

The dissatisfaction of a presbytery with the moral conduct of a presentee does not warrant a delay in concurring with a call, or moderating in it. A libel, in proper form, is the only way of proceeding, where charges affecting the character are made.² And, judging by analogy, the same observation should hold in the case of dissatisfaction being felt by the presbytery with the views entertained by the presentee upon doctrinal points.

¹ Act 1, Assembly 1851.

² Assembly 1771, Sess. 7 ; M'Master, Presbytery of Stranraer.

This dissatisfaction the presbytery may have an opportunity of expressing in the course of the trials which the presentee has to undergo. But, as a presentee, if the preliminary steps have been taken, he has a right to be put upon these trials ; nor does there seem to be any warrant for a presbytery, upon suspicion or even knowledge of his heterodoxy, to refuse to take him upon trials, unless a regular libel has been served upon him.

The call being sustained, it is put into the presentee's hand, and he is asked if he accepts of it. On his doing so, the presbytery devolves on him the care of supplying the vacant parish with public worship. It is understood that, till his admission, the same measure of supply is expected from him as the presbytery has been used to give.

It remains for the presbytery to judge of his qualifications. Trials, of exactly the same nature with those which he underwent before obtaining his license as a preacher, are prescribed to him ; and these being finished to the satisfaction of the presbytery, he is required again to subscribe the formula, the act against simony is read to him, a day is fixed for serving his edict, and another, at an interval of not less than ten days, for ordaining and admitting him to be minister of the parish.

If the presbytery is dissatisfied with the qualifications of the presentee, and rejects him on that account, the questions that are put to him, and the answers received from him in the course of his catechetical trials, and the remarks of the presbytery upon the discourses delivered by him as part of his trials, are taken down in writing, and the discourses themselves are laid on the table and docketed by the moderator, that in the event of an appeal the whole may be transmitted to the superior court. In a case which was brought from the presbytery

of Hamilton in 1765, the General Assembly set aside the trials which had given occasion to the appeal, directed new ones to be prescribed, and enjoined the course mentioned above to be followed.¹ In another case, in 1823, from the presbytery of Alford, the General Assembly, after hearing parties at the bar, appointed a committee of their members to examine the presentee, and on the report of that committee sustained his trials, and enjoined the presbytery to proceed with his ordination.² In another case the Assembly appointed a committee to examine the presentee on the subjects included in the presbytery's examination, including the trial sermons of the presentee, and to put additional questions.³

In two instances, the General Assembly has found a want of Gaelic to be a complete disqualification for a presentee in parishes where Gaelic is spoken.⁴

A license to preach the gospel obtained without the bounds of this Church, also disqualifies a presentee ;⁵ and it is conceived that a want of physical powers for the proper discharge of the ministerial office would equally entitle a presbytery to reject a presentee as disqualified.⁶ When a presentee is found to be disqualified, the presbytery orders intimation of it to be given to the patron of the parish, as has been stated above, in the case of objections being made and substantiated, or of documents produced by the presentee being invalid.

¹ Assembly 1765, Sess. 6 and 7 ; Walls, Presbytery of Hamilton.

² Assembly 1823, Sess. 9 and ult. ; Smith, Towie. Assembly 1830, Sess. 8 and ult. ; Campbell, Kilmichael-Glassary.

³ Assembly 1847 ; Plockton.

⁴ Assembly 1772, Sess. 9 ; Aberfoil. Assembly 1825, Sess. 5 ; Little Dunkeld.

⁵ Act 9, Assembly 1799. Act 5, Assembly 1799. Assembly 1798, Sess. 5, Gary, Brechin ; and Sess. 8, Legertwood.

⁶ Hill's View of the Constitution, pp. 41, 42.

On the day appointed for the ordination of the presentee, the presbytery meets before the celebration of public worship, receives the report of the minister by whom the edict was served, and directs the officer to proclaim at the most patent door of the church, that if any one has objections to the life or doctrine of the presentee, the presbytery is ready to hear them. A formal libel is not required upon that occasion. But any objections that are made must be immediately proved to be valid. They are otherwise disregarded.

The officer having returned, and none appearing to object, the presbytery directs the officiating minister, who had been appointed to preach and to preside, to proceed with the ordination. Public worship commences. After a sermon suited to the occasion, he reads a narrative of the presbytery's proceedings in regard to the vacant parish since the vacancy occurred, and then calls upon the presentee, in face of the congregation, to answer the following questions appointed to be put to ministers at their ordination.¹

1. Do you believe the Scriptures of the Old and New Testament to be the word of God, and the only rule of faith and manners?

2. Do you sincerely own and believe the whole doctrine contained in the Confession of Faith, approved by the General Assemblies of this Church, and ratified by law in the year 1690, to be founded upon the word of God; and do you acknowledge the same as the confession of your faith; and will you firmly and constantly adhere thereto, and to the utmost of your power assert, maintain, and defend the same, and the purity of worship as presently practised in this national Church, and

¹ Act 10, Assembly 1711.

asserted in Act 15, Assembly 1707, entitled Act against innovations in the worship of God ?

3. Do you disown all Popish, Arian, Socinian, Arminian, Bourignian, and other doctrines, tenets, and opinions whatsoever, contrary to or inconsistent with the foresaid Confession of Faith ?

4. Are you persuaded that the presbyterian government and discipline of this Church are founded upon the word of God, and agreeable thereto ; and do you promise to submit to the said government and discipline, and to concur with the same, and never to endeavour, directly or indirectly, the prejudice or subversion thereof, but to the utmost of your power, in your station, to maintain, support, and defend the said discipline and presbyterian government by kirk-sessions, presbyteries, provincial synods, and General Assemblies, during all the days of your life ?

5. Do you promise to submit yourself willingly and humbly, in the spirit of meekness, unto the admonitions of the brethren of this presbytery, and to be subject to them and all other presbyteries and superior judicatories of this Church, where God in his providence shall cast your lot ; and that, according to your power, you shall maintain the unity and peace of this Church against error and schism, notwithstanding of whatever trouble or persecution may arise, and that you shall follow no divisive courses from the present established doctrine, worship, discipline, and government of this Church ?

6. Are not zeal for the honour of God, love to Jesus Christ, and desire of saving souls, your great motives and chief inducements to enter into the function of the holy ministry, and not worldly designs and interest ?

7. Have you used any undue methods, either by yourself or others, in procuring this call ?

8. Do you engage, in the strength and grace of Jesus Christ our Lord and Master, to rule well your own family, to live a holy and circumspect life, and faithfully, diligently, and cheerfully to discharge all the parts of the ministerial work, to the edification of the body of Christ?

9. Do you accept of, and close with, the call to be pastor of this parish, and promise through grace to perform all the duties of a faithful minister of the gospel among this people?

Having obtained from the presentee, by his answers to these questions, the requisite declarations, promises, and engagements, the presiding minister invests him "with the full character of a minister of the gospel, conveying to him, by prayer, and the imposition of the hands of the presbytery, all the powers implied in that character." He then, in name of the presbytery, receives and admits the newly ordained minister to be minister of the vacant parish; and after giving him the right hand of fellowship, in which he is followed by all the members present, he returns to the pulpit, and earnestly and affectionately exhorts, first, the newly ordained minister to watch over the flock committed to his care, and secondly, the people to be respectful to their pastor, and careful to profit by his instructions. Public worship being concluded, the proceedings of the presbytery at the ordination are entered in the minutes; the name of the newly ordained minister is added to the roll; and the heritors and elders of the parish having been requested to attend, inquiries are made into the state of the session, the state of the church, the state of the manse, the amount of the stipend, whether there is a decret of locality for it, the salary of the schoolmaster, and the mode in which the poor are provided for. The

meeting of presbytery is then concluded, as it began, with prayer.

If the minister of another parish is presented to a vacant parish, his qualification to Government, and his letter of acceptance, must be laid on the presbytery table along with the presentation; and the steps to be taken for his settlement are the same as in the case of any other presentee. He is appointed to preach before the congregation on at least one Sabbath-day, and on a week-day. A call to him is appointed to be moderated in, according to the form mentioned above. On the day of its being moderated in, an opportunity is given to the members of the congregation to object to his settlement; and exactly the same mode of procedure which has been already pointed out is followed in regard to any objections that may be offered.

If he is already a member of the presbytery, the congregation and parish from which it is proposed to remove him are made parties by citation from the pulpit; and their objections, if they compare and object to his removal, are judged of by the presbytery, along with the reasons assigned for the translation. The minister himself should be present on the occasion. He is summoned *apud acta* at the preceding meeting, or by letter, if he is not then present.¹ In former times, and even at a recent date, transportations were not always allowed.² If there is no appearance on the part of the parish, and if the presbytery is satisfied with the reasons assigned for the proposed transportation, a sentence is pronounced, by which the minister's relation to the parish over which he presides is terminated; that parish is declared to be vacant by his

¹ Act 7, Assembly 1704.

² Assembly 1794, Sess. 5; Molleson, Dunsyre.—Assembly 1838, Sess. 5; M'Naughtan, Paisley.

removal, and he is translated to the other ; the day of his admission there is fixed ; and his edict is appointed to be served. This proviso is always added, that he continues minister of the one parish until he is admitted minister of the other.

If he belongs to a different presbytery, the presbytery which has received the presentation and the call in his favour, commissions some of its members to repair to that other presbytery, to lay before it the call, and an extract of the procedure with regard thereto, with reasons setting forth the expediency of the translation, and a request that the presbytery under whose jurisdiction the minister is will take the necessary steps for effecting his removal. The reasons of transportation are committed to writing, that a copy of them may be sent with the other papers to the minister's parish. The same steps mentioned above are ordered to be taken. And if no sufficient objections are made to his removal, the presbytery to which he belongs releases him from his charge, declares his church vacant from the day designed for his admission, or the day on which he shall be admitted to the other parish, and appoints him to wait for and obey the orders of the presbytery where the charge lies to which he is transported, as to the time of his admission thereto. Notice of these proceedings being forthwith sent to the presbytery where the vacant charge lies, the day of admission is fixed, and the edict is ordered to be served.¹

The act of ordination is not repeated at the admission of a minister to a new charge. But he is required, in the face of the congregation, to answer again the questions which were put to him at his ordination ; and having

¹ Act, Assembly 1642.—Act 6, Assembly 1604.—Pardovan's Collections, book i. title 2, 12, 13.—Act 11, Assembly 1850.

renewed the declarations, promises, and engagements which he then made, he is received and admitted minister of the parish, and exhortations are addressed, as in the case of a newly ordained minister, both to him and to his flock.¹

The settlement of ministers of chapels of ease, and other congregational charges, is to be conducted in the same manner as the settlement of parish ministers, in so far as the regulations are found applicable; full opportunity being always given for the tendering of objections. When the minister of a chapel of ease is to be removed to a charge in a different presbytery from that in which his chapel stands, it is not required to go through all the steps which have been mentioned in the case of a translation. The presbytery within whose bounds the minister's new charge lies gives notice to the other presbytery what course they are to follow in preparing for his admission, and at what time his admission will take place. The other presbytery is thus warned of the vacancy which is about to occur within their bounds, so that they may proceed forthwith to supply it.²

Presbyteries are required to obtain from the ministers within their bounds answers on the following points, to record the answers annually, and to transmit a copy thereof to the Synod: The stated number of diets of public worship on the Sabbath; the usual form of Divine worship; the time or times when the sacrament of the Lord's Supper is dispensed; the cause of its not being dispensed; the number of elders; visitation or catechising of the parishioners; deficiency in the means of religious instruction; adequacy of provision for the education of the young; Sabbath schools; parochial

¹ Act 10, Assembly 1711.—Act 11, Assembly 1850.

² Act 12, Assembly 1856.

records or registers ; mortifications for educational purposes ; collections for the schemes.¹

A professor in an university who is presented to a parochial charge, not situated in the city that is the seat of that university, or in the suburbs thereof, is required, within nine months after his being admitted to the said charge, to resign his professorship, and to produce to the presbytery, at its next ordinary meeting thereafter, a certificate that his resignation has been accepted. And a minister of a parish who is presented or elected to a professorship in any university which is not situated in the city, or the suburbs of the city to which his parish belongs, is required, at the first ordinary meeting of presbytery, which shall take place after the lapse of six months from the date of his induction into the professorship, to resign into the hands of the presbytery his parochial charge.²

Ordination or admission to a parish, *ipso facto*, makes the minister ordained or admitted a member of the presbytery and synod in whose bounds his parish lies.³

Ordination, without relation to a particular charge, is discouraged by the Church.⁴ But presbyteries are allowed to ordain ministers going to foreign parts, provided the call to them is not for a limited period, and provided there is some reasonable prospect of such permanent provision being allowed as is essentially necessary for the decent and respectable maintenance of an ordained minister of the Church of Scotland.⁵

It belongs to presbyteries to receive petitions respecting the erection of new churches, and to inquire into the circumstances on which the petitions

Chapels of
ease.

¹ Act 16, Assembly 1848.

² Act 6, Assembly 1817.

³ Act 5, Assembly 1754.

⁴ Act 9, Assembly 1784.

⁵ Assembly 1827, Sess. ult. Committee on Canada Petitions.

are founded, and the plan proposed for the constitution of the churches.

No new church can be erected but with the previous approval of the presbytery within whose bounds it is to be placed ; or, failing this, the sanction and approval of the General Assembly, at whose bar all parties having interest are allowed to be heard.

The petition for the erection of a chapel of ease lies on the table of the presbytery till the next ordinary meeting. The presbytery then consider whether, from the circumstances in which the petition is presented, the erection of the chapel is necessary or expedient. If it appears to them otherwise, they reject the petition. If not, they cite the minister and kirk-session of the parish within which the chapel is intended ; and they summon, by edictal citation, the heritors of the parish, and if there is a burgh, the magistrates of the burgh, to attend the next meeting of presbytery for their interest in the subject of the petition. Parties are heard at this third meeting and the presbytery then proceeds to ascertain the circumstances on which the petition is founded ; the facts, stated as reasons for the necessity or expediency of the chapel intended ; the general plan of the chapel itself ; the estimate of the expense to be incurred in completing it ; and the whole of the constitution under which it is to be managed.

The articles in the constitution are required to be drawn up and submitted to the General Assembly in the following order.¹ 1. The property of the chapel to be invested in whom. 2. To be exclusively for the use of a minister of the Church of Scotland. 3. Management and application of the seat-rents. 4. If

Constitution
of chapels of
ease.

¹ Act 10, Assembly 1826.

debt be incurred in erecting the chapel, how to be liquidated. 5. Managers and administration to be under inspection of the presbytery. 6. Manner of electing managers and supply of vacancies when they occur. 7. If a treasurer and clerk, how appointed and paid. 8. Amount of stipend. 9. What security for the same, and time of payment. 10. Plan of augmenting the stipend when necessary. 11. Collections and applications of the money collected. 12. Who are to choose the first minister, and how long to have this power. 13. The manner of supplying vacancies after the chapel is permanently established. 14. Supply of the pulpit during vacancies. 15. Names of candidates to be laid before the presbytery. 16. Certificates of candidates to be laid before the presbytery and judged of. 17. Day of election how to be appointed, and mode of calling meetings for this and other purposes. 18. Election, letter of acceptance, certificate of having taken the usual oaths, and renewed bond of security to be laid before the presbytery. 19. Duty to be performed by the minister when inducted. 20. If a Gaelic chapel, what portion of the service to be performed in that language, and what in English. 21. Bounds within which he is to labour, if any are fixed. 22. When the sacrament is to be dispensed. 23. How persons are to be admitted to partake of the same. 24. Allowance for communion elements to the minister when the sacrament is dispensed. 25. Mode of letting the seats, and time when to be done. 26. Persons to be proposed, if any preference is to be given. 27. Precentor, by whom appointed, and with what salary. 28. Officer, by whom appointed, and with what salary.—Any of the above particulars which, from the circumstances of the intended chapel, are not required to be specified, may be omitted. And if it is necessary to introduce other par-

ticalars, they are to be added after those which have been enumerated.

When the constitution of a chapel of ease is approved of, it is recorded in the books of the Assembly; and an extract being given, it is also recorded in the minutes of the presbytery. The manner in which the minister is to be appointed is fixed by the constitution. The whole of the procedure, in regard to his settlement, is the same that takes place in the case of any other minister. Before he is ordained, a satisfactory bond for his stipend must be laid before the presbytery.

Ministers of chapels of ease are not members of church courts; and not having kirk-sessions, they are not entitled to administer discipline. They have authority to perform all ministerial acts for the members of their own congregations; and in dispensing the sacrament of the Supper, should be assisted by the elders of the parish within the bounds of which the chapel lies.

All applications for the erection of new churches, and the relative documents, after passing through
New churches. the respective presbyteries, must, alongst with the feudal titles of the church and ground, be transmitted one month before the meeting of each Assembly, to the Home Mission Committee, or such other committee as the Assembly may have appointed for receiving the same, in order to be revised and reported on to the Assembly.

The parties who have appeared before the respective presbyteries, may attend the Assembly on the day fixed for the consideration of their case, of which due notice must be given to them.

If the documents are not transmitted for revisal as aforesaid, the applications will not be entertained by the Assembly. The documents must also be passed regularly

to the Assembly through the Committee of Bills, in common form.

Appeals on any of these proceedings are to be taken directly to the General Assembly ; but appeals on points not affecting the proposal for a new erection do not sist procedure.

The drafts of the titles of new churches, lodged or to be produced by the parties, are remitted to the Revising Committee on the constitutions of new churches, to insure that they are framed in terms of the constitutions. Extracts of the constitutions are given to the parties only on the production of a certificate from the committee, bearing that the feudal titles are framed in terms of the constitutions, or that there is security for their being so framed.¹

When alterations in the constitution of a church are desired, the trustees or managers, or the minister and session, apply to the presbytery, who are thereupon to cause all parties to be cited, and after inquiring into the circumstances and grounds of the application, to report the same to the General Assembly. Presbyteries must report all new erections and constitutions to the General Assembly that meets next after such erections have been made.²

When parties reside in a *quoad sacra* parish, or when either of them resides in a *quoad sacra* parish, a certificate of proclamation of banns in the church of the *quoad sacra* parish, and also in the church of the original parish, must be produced to the minister who celebrates their marriage.

The following rules are to be observed in receiving

Admission of ministers and licentiates of dissenting bodies in Scotland.	ministers of dissenting bodies and their congregations in Scotland, and also licentiates of such bodies, who are desirous of being admitted into connection and full communion with the
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¹ Act 14, Assembly 1850.

² Act 10, Assembly 1837.—Act 13, Assembly 1838.

Church of Scotland. Applications for admission into the Church from licentiates of dissenting bodies in Scotland, must be made, in the first instance, to the presbyteries within the bounds of which they have been residing for a year; or otherwise, a certificate in their favour must be produced from these presbyteries. The application lies on the table till the following meeting. Certificates of attendance on a full course of literature and philosophy, in one or other of the universities of Scotland, are then called for. Also certificates of attendance at a course of theology, during the same period of years required of her own students by the Church of Scotland, and of one full session on all the theological classes in one of the universities of Scotland. If the certificates are satisfactory, the applicants are taken on preliminary trials, and the cases that are favourable are reported to the Assembly. In the case of a dissenting minister making application for admission, certificates of character, and of his course of education prior to his ordination, are required at the meeting of presbytery subsequent to that at which the application is made; and all the documents, with the judgment of the presbytery on the expediency of granting the application, are transmitted to the General Assembly.

If the Assembly entertains the application, probationary trials follow. The probationer is not admitted as a licentiate of this church till the expiry of a year from the date of his application. The minister obtains the status of a licentiate of this Church, but does not exercise the functions of the ministry unless specially authorised by the presbytery.¹

It is provided that acts, which are intended to be

¹ Act 13, Assembly 1856.

binding rules and constitutions to the Church, must first be proposed as overtures to the General Assembly, and being there passed as such, must be transmitted to the consideration of the several presbyteries, that their opinions and consent may be reported to the next General Assembly.¹ Overtures may originate from presbyteries or synods, and be sent by them for the consideration of the General Assembly; or they may be introduced into the Assembly by ministers or elders who are members of Assembly. Two overtures were rejected on the ground that they came from a minister who was not a member of Assembly.² It is of great importance to the interests of the Church, that presbyteries should show diligence in considering the overtures transmitted, and not allow them to lie from year to year on their tables, as no overture can be passed into a law till the more general opinion of the Church is found to agree thereto.

When overtures transmitted by the Assembly have been received, the presbytery, at a previous ordinary meeting, appoints the particular day on which such overtures are to be considered.³ In like manner, when overtures originate with a presbytery, the member who proposes them gives notice, at a previous ordinary meeting, of his intention to do so.

In expressing an opinion upon an overture, nothing more is necessary than simply to approve or to reject it. Any changes that are suggested upon it are generally disregarded by the Assembly. The adoption of them is equivalent to the transmission of a new overture. The proposition transmitted for the consideration of presbyteries remains as it was sent, till the more general opinion

¹ Act 9, Assembly 1697.

² Assembly 1837, Sess. 4.

³ Assembly 1797, Sess. 8.

of the Church has been obtained upon it in the state in which it is transmitted. Hence, the more simple and unencumbered that an overture is the better.

In consequence of the act of Parliament for raising and establishing a fund for a provision for the widows and children of the ministers of the Church of Scotland, &c., presbyteries are required to keep a separate register, for recording the names and parish churches of all the ministers of the respective parishes, the dates of their ordination or admission, the dates of their marriage, the names of their children, the time of their children's death, the time of the deaths of ministers, the names of their respective widows, and the dates of the marriages or deaths of ministers' widows residing within their bounds. This register is regularly signed by moderator and clerk, and submitted, with the minutes of presbytery, to the examination of the synod; and the annual lists are made up from it, which must be transmitted from presbyteries to the trustees for managing the fund.¹ Presbyteries should also keep a register, in which the names of all probationers within their bounds are entered. This would enable them, without difficulty, to report their probationers annually, as is required, to the General Assembly. In the register should be marked, not only the names of the probationers, but the names of the presbyteries which licensed them, and of the presbyteries from which they have brought certificates, the date of their license, the date at which they came within the bounds, and the manner in which they are employed.

Presbyteries send representatives to the General Assembly according to the number of parishes within their bounds. Collegiate kirks, where there use to be two or more ministers, are

Commission-
ers to the
General
Assembly.

¹ Act 4, Assembly 1744.—Act 4, Assembly 1757.

understood to be as many distinct parishes as they have ministers. Professors of divinity in any university within the bounds are members of the presbytery, if they be ministers, and are considered as so many additional parish ministers.

Presbyteries consisting of twelve parishes, or under that number, send two ministers and one ruling elder.

Presbyteries consisting of eighteen parishes, or under that number, but above twelve, send three ministers and one ruling elder.

Presbyteries consisting of twenty-four parishes, or under that number, but above eighteen, send four ministers and two ruling elders.

Presbyteries consisting of more than twenty-four parishes, but not exceeding thirty, send five ministers, and two ruling elders.

Presbyteries exceeding thirty parishes, send six ministers, and three ruling elders.¹

Presbyteries exceeding thirty-six ministerial charges, send seven ministers, and three ruling elders.

Presbyteries exceeding forty-two ministerial charges, send eight ministers, and four ruling elders.²

Presbyteries exceeding forty-eight ministerial charges, send nine ministers, and four ruling elders.

Presbyteries exceeding fifty-four ministerial charges, send ten ministers, and five ruling elders.

The office of a principal or professor of divinity in a University, when said principal or professor does not hold a cure of souls, ranks as a ministerial charge.³

The election of the representatives is made at least forty days before the meeting of Assembly, and within a month preceding the first of the forty

Election.

¹ Act 5, Assembly 1694.—Act 6, Assembly 1712.

² Act 19, Assembly 1835.

³ Assembly 1839, Act 7.

days, except in the case of presbyteries lying in the Northern and Western Isles. The representatives from these presbyteries may be elected at any time before the first day of May, due notice of the intention to elect having been given fifteen days preceding.¹ The day of election is appointed, and the appointment is entered in the minutes, at a meeting at least ten free days before the election; and the election must take place between the hours of one and eight o'clock in the evening.²

It is competent for any one who is elected to decline, and for the presbytery to make an after election of another commissioner in his room.

There are printed forms according to which the commissions, in the case either of an original or of an after election, must be made out. The commissions are signed by the clerk; and they are attested by either the moderator or the clerk. They should be transmitted to the agent for the Church at least one week before the meeting of the Assembly.³

The presbytery has to attest the commissions given to elders by any university or burgh within its bound. Along with the commission from a burgh, there must be produced to the presbytery an attestation from the kirk-session to which the burgh belongs. All commissions in favour of ruling elders as commissioners to the General Assembly, must be accompanied by a certificate from the kirk-session of which they are members, bearing that they are *bonâ fide* acting elders. This is not required in the case of teaching elders, or theological professors.⁴ Presbyteries may attest the commissions of representatives from burghs, although no certificate of their being *bonâ fide* acting elders is produced, provided they have

¹ Assembly 1838, Act 11.

² Act 10, Assembly 1783.

³ Assembly 1841, Act 11.

⁴ Assembly 1839, Act 12.

other sufficient grounds of information as to their truly being so.¹

When there is an after election, the extract of the first, as well as the second election, must be transmitted to the General Assembly.²

The commissions should bear that the ministers elected have signed the formula enjoined by Act 10, Assembly 1711, and that the ruling elders have signed the formula prescribed by Act 11, Assembly 1694. But numerous instances have occurred in which, notwithstanding the omission of this statement, the commissioners have been allowed to supply the defect, by signing the one or the other formula at the bar of the Assembly.

Every commissioner from a presbytery is entitled to have an extract of the presbytery's commission to its representatives; and any one valid commission is sufficient to entitle the representatives to their seat in the Assembly. The commission first lodged by a member of the presbytery of Jedburgh in 1829 was rejected, because it had not been attested. At a subsequent meeting of the Assembly, a commission from the same presbytery was presented, in which there was no defect, and the names of the commissioners were added to the roll.

In former times it was an arduous undertaking for a minister to attend the Assembly; and if he went, when deputed for that purpose by his presbytery, he deserved credit for the discharge of his duty. The case is now much altered. The situation of a member of Assembly has, in a great majority of instances, become an object of desire. And hence, to prevent collision of interests, and to give to all the members of presbyteries the same

¹ Assembly 1841, Act 11.

² Assembly 1809, Sess. 3 and 6; Lochmaben.—Assembly 1836, Sess. 6.

opportunity of attending the supreme ecclesiastical judicatory, the system of rotation has been very generally adopted in sending commissioners to the General Assembly ; but the rule is unchanged, that the commissioners be elected.

The election of the members of Assembly renders two meetings of presbytery indispensable in the course of the year. The number of meetings held depends usually upon the local business to be transacted. Some presbyteries meet once a-month. Presbyteries have the power of meeting when they please. But it is necessary, before a meeting is closed, to resolve when the next meeting is to be held, to enter this resolution in the minutes, and to cause it to be publicly intimated by the officer ; otherwise the presbytery is defunct, and, without the intervention of the superior court, has no power to reassemble for business. When a presbytery has been brought into this situation, the moderator or clerk states the fact at the meeting of Synod or Assembly which next ensues, and asks that the presbytery may be appointed to meet on a particular day, of which notice should be given to all the members.

A *pro re natâ* meeting of presbytery is called by the moderator, either on his own motion, when any thing has occurred which appears to him to require the assembling of the brethren before the time of the ordinary meeting ; or on application made to him by some of the members of presbytery, with a statement of the grounds on which the application is made. He may refuse to call a meeting when so applied to ; but the responsibility of doing so rests upon him, and at the first ordinary meeting the whole of the circumstances will be brought before the presbytery. When a *pro re natâ* meeting is called, letters of intimation, both of the day of

meeting and of the subject to be discussed, are written to every member. The notice must be sent to them a sufficient time before the day appointed for the meeting. The moderator states at the meeting the circumstances which led him to call it ; and the presbytery, in the first place, pronounces its judgment upon his conduct in doing so. No other business but that for which the meeting was called can be transacted at it ; and that business can be proceeded with only in the event of the presbytery's approving of the conduct of the moderator in summoning the meeting.

The minutes of *pro re natâ* meetings are always read at the first ordinary meeting of presbytery thereafter. But the object of this is simply to ascertain their correctness. The business transacted at the *pro re natâ* meeting cannot be taken up anew, or discussed again at the ordinary meeting. And neither has the presbytery a right to review the decision come to at the *pro re natâ* meeting, nor has any member, although he was absent from the *pro re natâ* meeting, a right to object to what was done there, or to complain of it to the superior court on the minutes being read at the ensuing ordinary meeting. Having got due notice of the *pro re natâ* meeting, and of the business for which it was called, it was his part to attend if he was interested in the matter. Absence deprives him, in that as in other cases, of his opportunity of dissenting from the judgment of the court, or complaining of it.

The clerk and the officer of the presbytery are of its own appointment.

SECTION IV.

THE PROVINCIAL SYNOD.

A PROVINCIAL synod is composed of two, three, or more presbyteries, as that matter happens to be regulated by the General Assembly. The time also and the place of each synod's meeting are fixed by the Assembly. There are sixteen synods in the Church of Scotland, and most of them meet twice in the year.¹

The synod is opened by the moderator of the preceding synod, who preaches a sermon suited to the Constitution. occasion. After public worship is finished, he intimates that the synod is to meet, and he constitutes it by prayer. The roll of the synod is then made up, the presbytery which stood first on the roll at the preceding synod being put last, and that which was in the second place being called first. "Every member of all the presbyteries within the bounds of the synod is a member of that court; and the same elder who had last represented the kirk-session in the presbytery is its representative in the synod," and, on producing a proper extract of his election under the hands of the session-clerk, is entered on the roll.

"Neighbouring synods correspond with one another by Correspond- ents. sending one minister and one elder, who are entitled to sit, to deliberate, and to vote with the original members of the synod to which they are sent."² They must have a regular commission from their own synods to act as correspondent members, and on its

¹ Act 8, Assembly 1830.

² Hill's View of the Constitution, p. 50.

being produced and read, their names are added to the roll.¹ The elder as well as the minister must belong to the synod from which he receives his commission to act as a correspondent.²

Correspondent members are sent only to neighbouring synods. It is unconstitutional to send them to presbyteries within their bounds.³

Correspondent members are appointed at the first diet or meeting of the synod. Every synod must have at least two meetings for the despatch of business.

The roll being made up, a new moderator, who must be a minister, is chosen. The mode of choosing him varies in different synods. The general principle is, to take the moderator from the oldest of those ministers who have not filled the chair. The moderator is changed at every periodical return of the meeting of synod.

The minutes of the last meeting of synod are then read over, and such matters as require to be noticed are taken up in their order. A committee is appointed for receiving overtures, and for judging whether or not they should be transmitted. Overtures may be sent for the consideration of the synod by presbyteries, or they may be proposed by individual members of synod. Another committee is appointed for like purposes in regard to bills, references, and appeals. The chief business of the synod is thus prepared by these committees, and can come to it only through them. Committees are also appointed to revise such presbytery books as are laid on the table ; it being the law of the

¹ Assembly 1829, Sess. 9 ; Synod of Glenelg.

² Assembly 1831, Sess. 10 ; Remarks on Synod Books.

³ Assembly 1812, Sess. 7 ; Grant, Synod of Orkney.

Church that every presbytery within the bounds shall produce its registers to the provincial synod, to have them examined and attested.¹ Other committees are appointed as the synod sees cause, in order to simplify or expedite its business.

The clerk gives notice of the reports received from presbyteries respecting students to be taken on probationary trials, and these are ordered to be considered at the next sederunt.

If presbytery clerks fail to forward the extract of a student's certificates, it is competent for the student himself, or any member of synod, to lay the extract before the synod. The extract may be presented at any diet of the synod which is not the last.²

Intimation is publicly made of the time at which the next diet is to commence, before the adjournment takes place. The committees meet in the interval
 Committees. between the diets.

The moderator and clerk are *ex officio* moderator and clerk of the committee for overtures. The other committees choose their own moderators and clerks.

Petitions are presented to the committees for overtures and bills, along with any papers which it is desired to bring under the notice of the synod, praying that the same may be transmitted. It is competent for these committees to refuse to transmit any papers the contents of which they do not approve of, or with which they deem it unnecessary to occupy the time of the synod; and when there is any informality in the mode of presenting or drawing up the papers, it is their duty to refuse to transmit them. But the parties who lodge the papers have the right of appeal, and so may bring the

¹ Act 9, Assembly 1700.

² Act 8, sect. 8, Assembly 1813.

conduct of the committees, and ultimately the subject-matter of the papers, before the synod.

The committees draw up regular minutes, in which they state particularly the whole of their transactions, and these minutes constitute their report to the synod.

The committees for revising presbytery registers commence their revision from the last attestation of the synod, and name in their report the page or date from which they begin, and the page or date to which they bring down that revision. They have to observe not only that the registers are exact and well kept, but also whether there is anything truly censurable in them, and in itself material with respect to discipline; and if there appears to the synod to be such censurable matter, it is recorded as censured both in the synod-book and in the attestation.¹ A form of attestation, where there is nothing censurable, is given in Act 9, Assembly 1700. The report of the committees for revising registers is presented in writing, and signed by the members.

At the next diet of the synod, after the minutes of the former meeting have been read, the extracts of the certificate or certificates, laid before presbyteries in favour of students proposed for probationary trials are read, and the synod judges of the expediency of allowing the several presbyteries to admit the different students to trials. The report of the committee for overtures is then called for, and whatever it contains for the discussion of the synod is first taken up.

When overtures are transmitted by a synod or a presbytery to the General Assembly, it is usual to appoint the members of the synod or the presbytery who may be members of Assembly, to support the overtures in that

¹ Act 9, Assembly 1700. Act 9, Assembly 1706. See Section I. of this work: Minutes.

venerable court. But these members of synod or of presbytery are not thereby placed at the bar of the Assembly. In the discussion of overtures there are no parties. All the members of Assembly have the same right to speak and to vote upon the subject of any overtures that are introduced ; only, through courtesy, those members who are connected with the quarters from which overtures have originated are generally allowed to speak first, and to explain the grounds upon which the overtures have been transmitted.

The report of the committee for bills is next called for, and the references, complaints, or appeals from presbyteries, or private parties, are severally heard and determined. Then, in succession, the reports of the committees for revising presbytery registers, and of the other committees that may have been appointed, are taken under consideration.

Privy censures are enjoined in all the inferior Church courts, and in former times were duly attended to. In synods each presbytery was removed in succession ; the remaining members conferred about the conduct of the absent presbytery, in so far as it was known to them ; and admonition, if it appeared necessary, was given in the spirit of brotherly love to the presbytery when it was again called in. The practice of privy censures has now gone into disuse, although notice is taken of them, it is believed, at every meeting of synod. It would be more becoming to omit the notice of them altogether, than to profess to delay them from one meeting of synod to another, without any intention of ever resuming them.

When the business of the synod is finished, a committee is appointed to revise the minutes before they are written out *in mundo*. Intimation is publicly made of

the time when the next meeting of synod is to be held, and of the place of its meeting ; and the moderator closes the synod with prayer.¹

The proceedings or minutes of every synod must be signed by both the moderator and the clerk thereof. And synod-books, completely filled up, are required to be produced yearly to the General Assembly, in order to their being revised.²

The clerk and the officers of the synod are of its own appointment.

Meetings of synod *pro re natâ* are occasionally, but very rarely held. The Act of Assembly 1647 asserts the right of assembling synodically as well *pro re natâ* as at ordinary times. There are instances in which such meetings have been held by appointment of the General Assembly. In one case a party was empowered by it to apply for a *pro re natâ* meeting of synod, if he saw meet.³ In another case the meeting was to be called on the application of any three ministers.⁴ It appears, from the records of the synod of Glasgow and Ayr, that in very few instances was a *pro re natâ* meeting held, in which power had not been previously given by the synod to call such a meeting. And it appears further from these records, that in every instance except one, the *pro re natâ* meeting was held with the same forms, and in the same manner, as an ordinary meeting of synod.

The members of every presbytery within the bounds being supposed to be present at the synod, it is competent for any of the presbyteries to hold a special meeting, under the authority of the synod, intimation being publicly given of the meeting at some one of the diets of synod.

¹ Pardovan's Collections, book i. title 14. ² Act 11, 1693.

³ Assembly 1724, Sess. 6 ; McCormick, Synod of Fife.

⁴ Assembly 1730, Sess. 13 ; Chalmers, Synod of Aberdeen.

SECTION V.

THE GENERAL ASSEMBLY.

THE General Assembly meets annually in the month of May, and continues its sittings for ten days, beginning them always on Thursday. It consists of representatives from the presbyteries, royal burghs, and universities in Scotland, and from the churches in the East Indies that are connected with the Church of Scotland.¹

Eighty-four presbyteries send, Ministers	234	
Elders	103	
	<hr/>	337
Sixty-seven royal burghs send, Elders		67
Five universities send, Ministers or Elders		5
Churches in India send, a minister and an Elder		2
		<hr/>
		409

If all the members of Assembly were present, the majority would be ministers.

The commissions to these representatives are required to be lodged with the agent for the Church Commissions. a week before the first diet or meeting of Assembly, in order that the rolls may be timeously made up. Commissions not delivered then, or prior to the first diet, must be put into the agent's hands in the intervals betwixt the after diets, and not in presence of the Assembly.²

“The General Assembly is honoured with the representation of the Sovereign by the Lord High Commissioner, whose presence is the gracious pledge of protection and

¹ Assembly 1814. Assembly 1821, Sess. 5.

² Act 4, Assembly 1694.

countenance to the Established Church, and the symbol of that sanction which the civil authority of the State is ready to give to its legal acts.

“The Church of Scotland claims the right of meeting in a General Assembly, as well as in inferior courts, by its own appointment; but it also recognises the right of the supreme magistrate to call synods and to be present at them; and the two rights are easily reconciled when there subsists between the Church and the State that good understanding which the true friends of both will always be ready to cultivate.”

During the long period of a century and a half, there has been no interference in the exercise of these rights; and only two instances are on record, in 1638 and 1692, in which the Commissioner, in opposition to the mind of the judicatory, dissolved the Assembly without fixing a time for the meeting of another. The Assembly continued its sittings upon these occasions, and by its own intrinsic power appointed the day when the next Assembly should be held.

The Lord High Commissioner takes no part in the proceedings of the Assembly; nor, from what has been stated, is his presence absolutely necessary to the holding of the Assembly. When from temporary illness he is unable to attend, the business of the Assembly proceeds notwithstanding his absence. In 1798, it was not till the fourth session that the Commissioner appeared in the house. The King's commission to him had been laid on the table, and read at the opening of the Assembly.

Formerly, when the Commissioner signified a wish to retire, and the business for the day had not been finished, or when the business was expected to extend to a fatiguing length, it was usual for the Assembly, out of con-

sideration for him, to form itself into a committee of the whole house, by which means an adjournment took place, the business proceeded, a report was given in at the next meeting, and the Assembly pronounced the deliverance which had been resolved on in the committee. This form is not now considered necessary. The Commissioner retires when he finds it convenient for himself, and the Assembly continues its sitting.

The meetings of Assembly are constituted by the singing of praise, reading a portion of the word of God, and prayer.¹

On the day appointed for the meeting of Assembly, a sermon is preached by the moderator of the last Thursday. Assembly, who intimates at the conclusion of public worship that the supreme ecclesiastical judicatory is about to sit, and afterwards opens its meeting by prayer.² The agent reads the roll of members which the

¹ Assembly 1842, Sess. 3.

² It is gratifying to think of the changes which have recently been made upon some of the arrangements connected with the religious observances of the General Assembly. There was room to deplore the desecration of the Sabbath during its sitting; and there still is room to regret a variety of circumstances which indicate a want of proper attention to religious duties. But it is honourable to the noblemen who, for a succession of years, have held the situation of Commissioner to the General Assembly, that they have done everything in their power to uphold the sanctity of the Sabbath-day, by dispensing with the military parade which used to collect a crowd of idlers on the street, and by discontinuing public dinners on the Lord's day. These changes were made under the royal sanction. May the interest which they show to be felt in high places for the right observance of religious institutions become universal! May every succeeding year evince a deeper and more pervading spirit of piety both among the members of the Assembly, and among those who witness their proceedings! These proceedings are commenced daily with devotional exercises, and the meeting on one day is specially appropriated to prayer for the Divine direction and blessing. Is it right that members of Assembly should not be found in their places at the

procurator, clerks, and agent for the Church have prepared,¹ and one of the ministers upon that roll is chosen moderator.

It is usual for the moderator of the last Assembly to propose his successor. Any member of Assembly may propose another candidate for the chair. In 1784, when there were two candidates, they were both proposed by the moderator. In the event of a contested election, the candidates are first called upon to give their votes.

When the office of principal clerk of Assembly has become vacant, the Assembly proceeds to the election of a clerk, immediately after the election of a moderator.² In both these cases, as the election takes place before the commissions of members have been passed by the Assembly, it is usual, when there is a contested election, to ask beforehand that there may be a scrutiny of the votes. In the event of a vacancy in the office of sub-clerk, or of procurator or agent for the Church, that vacancy is not supplied till a later period in the proceedings of the Assembly.³

The first business of the new moderator is to receive a communication from the Throne, of the commission appointing the nobleman who delivers it to represent the Sovereign, and of a letter from the Sovereign to the General Assembly. After the royal commission and letter hour of prayer? What can be so important for the right conduct of business as grace from God, and such a frame of mind as acts of religious worship are likely to induce? It is painful to observe, from the scanty attendance at the commencement of each day's proceedings, that this is not generally felt or considered by members of Assembly.

¹ Assembly 1781, Sess. 5.

² Assembly 1789, 1807, 1828, Sess. 1.

³ Assembly 1802, 1828, Sess. 1. Assembly 1831, Sess. 1. Assembly 1837, Sess. 1. Assembly 1856, Sess. 1 and 10.

are read by the principal clerk, and ordered by the house to be recorded, the Lord High Commissioner addresses from the throne a speech to the Assembly, and the moderator, in their name, makes a suitable reply.

“The Court being thus constituted, a committee is appointed to prepare an answer to the royal letter.” Another committee is appointed for revising commissions which the procurator, clerks, and agent for the Church have found to be incorrectly drawn up, or respecting the validity of which doubts may be entertained. A report upon this part of the business of the committee is made as often as commissions have to be examined by it, the object being to have the roll of members made up. The other matters to which the same committee has to attend are, censuring absents from the diets of the Assembly, naming ministers to preach before his Grace the Commissioner, and receiving lists of probationers in the several presbyteries. The Act 5th of Assembly 1819, for the better despatch of business, is then read; and a committee for overtures is named, and appointed to meet. All overtures transmitted through the committee, and all petitions or other applications to the Assembly transmitted through the committee of bills, must be printed and laid on the Assembly’s table, in sufficient numbers for the use of members, on or before the first Monday of its sitting, and must be lodged with the agent for the Church four days before the meeting of the Assembly, excepting when they relate to matters arising after that date, otherwise they cannot be received or founded on in the Assembly.¹ Overtures, petitions, &c., arising out of matters that have come to the knowledge of the Assembly during its sit-

¹ Assembly 1838, Act 13.

ting, must be printed and laid on the table at least one day before they are discussed.¹

A committee for bills, references, and appeals is also named and appointed to meet, so that the Assembly may have the papers connected with every private cause laid on the table at its meeting upon Saturday. And for this purpose the same committee of bills is on Friday appointed to hold another meeting on the morning of Saturday, before the meeting of Assembly. All appeals, complaints, or references, not presented at one or other of these meetings, are considered as deserted or fallen from. Other meetings of the committee of bills are granted upon sufficient cause being shown why the papers wished to be presented could not be lodged at the specified time, or in consequence of matters having occurred which require the transmission of papers through that committee.² The arrangement of the business of the Assembly during its sittings is now intrusted to a committee, which is named for that purpose on the first day of meeting.

On Friday the diet is spent in prayer. Two ministers are requested by the moderator to follow him ^{Friday.} in offering up supplications to God. During the intervals of prayer, the moderator intimates to the ministers who have been selected to preach before his Grace the Commissioner the duty which they have to perform. Reports of the committees on bills and overtures, and for the arrangement and despatch of business generally, are read ; and of late it has been the practice to hear a report of one or other of the committees on the schemes of the Church. It would be well to make a distinct arrangement, that on the first Friday two reports

¹ Assembly 1834, Act 10.

² See Section IV. of this work : Committees for overtures and bills.

of these committees were always to be given in. The meeting on Friday is understood to be specially devoted to prayer. But the hearing of these reports, instead of interfering with that exercise, will rather furnish matter for prayer. If the scheme is prospering, the gratitude of the Assembly will be quickened, and earnest desires will be expressed for a continuance and an increase of the Divine favour to it. If difficulties are attending the operations of the scheme, there will be cause for deep humiliation on the part of the Assembly, and for crying mightily to God to uphold and bless his servants in the time of trial, giving them wisdom and devotedness to his service, and overruling all things for the advancement of his glory.

Upon the first Saturday of the Assembly, the answer
 Saturday. which has been prepared to the royal letter is read and considered, and his Grace the Commissioner is requested to transmit it. The practice of reading the answer to the royal letter, or any address, paragraph by paragraph, has been given up.¹

Committees are appointed to revise the actings and proceedings of the Commission of the last General Assembly; to revise the record for managing the Royal Bounty, or the £2000 annually given by the Queen for the reformation of the Highlands and Islands of Scotland; and to audit the accounts of the procurator and agent for the Church, and to receive all new applications for the public money. Such applications must be transmitted to the agent for the Church, on or before May first, yearly, that they may be laid by him before the procurator, who has to report upon them to the Assembly.² The reports of these committees are received at some subsequent diet of the Assembly. And on the second Thursday of its

¹ Assembly 1832, Act 6.

² Act 6, Assembly 1763.

sitting, the Assembly determines when reports of committees, not previously lodged and disposed of by special order, shall be taken up.¹ The principal copy of the report of any committee must be lodged with the clerk before the report itself is read to the Assembly. And all reports must be written on foolscap paper, so as to admit of their being bound up in volumes.²

Other committees are appointed as the business of the Assembly renders them necessary ; as, committees for revising synod-books, which books are called for on Monday ; a committee for classing returns to overtures ; a committee for classing returns from presbyteries relative to the examination of schools ; a committee for naming members of the commission, and preparing instructions for them ; a committee for managing the Royal Bounty, &c. &c. To all its committees the Assembly gives what directions it sees proper. The Act 4th of Assembly 1713, is the rule to guide the revisers of synod-books. Among other things which are there noticed, the visitors are instructed carefully to advert if the synod-books be completely filled up and signed by the moderator and clerk ; if the synod's proceedings be agreeable to the constitutions of this Church, and acts of the General Assembly ; if the register be correctly written ; if inquiries have been made by the synod as to the collections ordered by the Assembly for the different schemes of the Church, &c.³ The visitors are also required to communicate their remarks on the books to some of the synod, and hear them thereupon, before they bring in the same to the Assembly.⁴ A similar requirement is made in the case of the commission record ; and the attestation

¹ Assembly 1832, Act 6.

² Act 13, Assembly 1838.

³ Assembly 1706, Sess. 3.—Assembly 1710, Sess. 3.

Act 14, Assembly 1850.

to it is enjoined to be the same, *mutatis mutandis*, as the attestation to the synod-books.¹

“In discussing business, the General Assembly has adopted some of the forms necessary in all great meetings, the observance of which, supported by the authority of the moderator, and the general feeling of the house, is commonly sufficient to preserve a becoming degree of order. Upon a division, the sense of the house is collected by the names on the roll being called by one of the clerks, and the votes being marked by the principal clerk, under the eye of the moderator.

Before the roll begins to be called, the doors of the Assembly-house are shut, and they are not allowed to be opened again till the judgment of the Assembly is declared.

The standing orders of the Assembly on motions and votes are :

1. A motion, whether original or amended, shall be given in to the clerk in writing, as soon as it shall have been made to the house, and immediately read to the house by the moderator.

2. When a motion is duly seconded, and in possession of the house, it shall not be competent to make any alteration upon it, excepting in the shape of an amendment, or second or third motion, as the case may be, regularly proposed to the house, unless it shall be consented to by the mover and seconder of any other motion or amendment then before the house.

3. The person who makes the first motion shall have a right to reply, after which the debate shall be held to be definitely closed : and no other person shall be entitled to speak, excepting with regard to the manner of putting the vote.

¹ Act 9, Assembly 1700. Act 8, Assembly 1706.

4. All motions, except the first, shall be considered as amendments on the first, and disposed of accordingly.

5. When there are only two motions before the house, the question put to the house shall be, motion or amendment.

6. When there are three motions, the first question shall be, whether the second or third motion shall be put as the amendment against the first ; and the second question shall be, whether the first motion or the amendment so fixed shall be the determination of the house.

7. When there are more than three motions, the first question shall be, whether that last proposed shall be put as the amendment, and so on, till only three remain, when the procedure shall be as prescribed in article 6.

In electing to an office, however numerous the candidates may be, there is only a single vote. All are put in nomination at once ; and the candidate who has a greater number of votes than any of the others is declared duly elected.¹ The Assembly departed from this practice in 1855, when the office of agent was vacant, and four candidates appeared. Three votes were successively taken.

“ Counsel are heard at the bar of the Assembly, when it is judging private causes, but not when it is discussing overtures, which are matters of internal regulation.”

An overture, or a proposal to make a new general law, or to repeal or alter an old one, may originate with an individual, a presbytery, or a synod, or with the General Assembly, which in that case appoints the committee of overtures to meet and to frame one.

“ The General Assembly may dismiss the overture, if

¹ Assembly 1831, Sess. 1. Assembly 1837, Sess. 1. Assembly 1855, Sess. 6.

they judge it unnecessary or improper ; or may adopt it as it was sent ; or may introduce any alteration which the matter or the form seems to require. If it is not dismissed, it is transmitted by the General Assembly, in its original or its amended form, to the several presbyteries of the Church, for their consideration, with an injunction to send up their opinion to the next General Assembly, who may pass it into a standing law, if the more general opinion of the Church agree thereunto, that is, if not less than forty presbyteries approve." Forty-three now.

"When the immediate enactment of the new law proposed in an overture, appears essential for the good of the Church, the General Assembly exercises the power of converting the overture into what we are accustomed to call an interim act ;¹ and it is acknowledged by all who understand our constitution, that till the meeting of the next Assembly, such temporary enactments are binding upon all the members of the Church." To prevent the abuses which may result from the passing of interim acts, the following enactment was recently made, with the consent of a majority of presbyteries, that no overture shall be converted into an interim act which involves an essential alteration of the existing law or practice of the Church.²

In the exercise of its supreme executive power, "the General Assembly often issues peremptory mandates, summoning individuals and inferior courts to appear at its bar. It sends precise orders to particular judicatories, directing, assisting, or restraining them in the discharge of their functions ; and its superintending and controlling authority maintains soundness of doctrine, checks irregularity, and enforces the obser-

¹ Assemblies 1711, 1719, 1731, 1737, 1739, 1742, &c.

² Act 14, Assembly 1848.

vance of general laws throughout all the districts of the Church.”

“The settlements of vacant parishes have furnished the most important occasions for calling forth the executive power of the General Assembly. Ever since the establishment of the Church of Scotland, and particularly since patrons were restored to their ancient rights by the Act 1712, presbyteries, even when they did not find any defect in the personal qualifications of the presentee, have often, from a supposed deficiency in his call, from regard to the wishes of the people, or from some local circumstances, delayed or even refused to settle him. When the matter is brought before the General Assembly, that supreme court, if satisfied that the conduct of the presbytery was not warranted by the laws of the Church, interposes its authority, and enjoins them to proceed with all convenient speed, according to the rules of the Church, to receive and admit the presentee minister of the vacant parish. If the reluctance discovered by the members of the presbytery appears to be such that they cannot safely be trusted with any discretionary powers, the General Assembly appoints the particular days of their meeting, in order to take the steps previous to the settlement, prescribes the whole course of their procedure, and constitutes them, in that particular case, the ministerial officers of the General Assembly, who are not allowed to exercise their own judgment, but are required implicitly to obey the instructions given by their superiors. As the existence of the society depends upon the maintenance of this paramount authority, ministers have often been censured, and sometimes deposed, when, setting their own judgment in opposition to that subordination which the constitution implies, and which their solemn promise at the

time of their admission bound upon their conscience, they have finally refused to comply with the orders of the supreme executive power."¹

The business which the Assembly is unable to overtake, it refers to the Commission.

The minutes of the last sederunt are read before its close, that they may receive the sanction of the Assembly, in the same way as the minutes of former sederunts, which are always read at the opening of the meetings subsequent thereto.

A committee is appointed to revise the minutes of Assembly, and to select from its acts such as are of general concern, that they may be printed. A great improvement has been recently made by this committee, acting under the orders of the Assembly, in giving, in the printed abridgment of the Assembly's proceedings, a fuller detail of the cases which come before it, so as to convey a distinct idea of the grounds upon which the decisions of the supreme ecclesiastical judicatory were pronounced.

When the business is concluded, the moderator addresses first the Assembly, and then his Grace the Commissioner, and in the name of the Lord Jesus Christ, the King and Head of his Church, appoints another Assembly to be held on a certain day in the month of May in the following year.

The Lord High Commissioner then addresses the Assembly, and, in the name of the Sovereign, appoints

¹ Hill's View of the Constitution, pp. 57, 66, 67, 70, 72. Act 5 Assembly 1733, *et sequentia*. Assembly 1750, Sess. 9; Presbytery of Linlithgow. Act 4, Assembly 1752, Assembly 1774, Sess. 7; and Assembly 1775, Sess. 5, St Ninian's. Assembly 1790, Sess. 4; Presbytery of Paisley. Assembly 1803, Sess. 5; Presbytery of Tain

another Assembly to be held upon the day mentioned by the moderator.

Intimation of this appointment is publicly given, and the Assembly is concluded with prayer, singing of psalms, and pronouncing the blessing.

SECTION VI.

THE COMMISSION OF THE GENERAL ASSEMBLY.

THE Commission of the General Assembly is somewhat similar to a committee of the whole house. It is composed of all the members of Assembly, with the addition of one minister, who is named by the moderator. Those, also, whose commissions to the General Assembly were rejected for some informality, are usually appointed to be members of the Commission.

The Commission cannot proceed to business unless thirty-one of the commissioners are present, of whom twenty-one must be ministers.

They meet within the Assembly-house, the first day after the dissolution of the Assembly; and thereafter the second Wednesday of August, the third Wednesday of November, and the first Wednesday of March; and oftener, when and where they shall think fit and convenient. But no private process can be determined except at the four stated diets; and what is determined at one diet of the Commission, with relation to private causes, cannot be altered at any other diet thereof; but stands and continues in force till disapproved of by the General Assembly.

The commissioners have power to choose their own moderator, and finally to determine as they shall see cause in every matter referred to them by the Assembly.

If their sentences are not obtempered by presbyteries or synods, they cannot execute the same themselves, by appointing correspondent meetings of the Commission ; but must allow them to lie over to the ensuing Assembly, to which such presbyteries or synods are answerable for their conduct in regard to the sentences of the Commission.

Protests for liberty to complain against these sentences may be taken by the parties before the Commission ; but these protests are not held as sufficient reason to justify disobedience to the sentences of the Commission on the part of the inferior courts.¹

The proceedings of the Commission are faithfully recorded, and submitted to the review of the next General Assembly, which attests the Commission record if approved of ; or reverses the sentences of the Commission, and finds "those who concurred in them censurable, if it shall appear that they have exceeded their powers: that is, have either meddled in any other matters than what were committed and referred to them, or acted contrary to the acts and constitution of the Church, or to the prejudice thereof."

"As amongst the annual instructions given to the commissioners, they receive a general direction 'to advert to the interest of the Church on every occasion that the Church and present establishment thereof do not suffer or sustain any prejudice which they can prevent, as they will be answerable,' they may find it expedient to meet oftener than at the four stated diets ; and a Commission is legally constituted at any time when thirty-one of the

¹ Assembly 1750, Sess. 9 ; Presbytery of Kirkcaldy.

commissioners, whereof twenty-one are ministers, finding themselves assembled in any place, proceed to choose a moderator. It has been usual for the moderator of the last Assembly, upon the few occasions when an extraordinary meeting of the Commission has been held, to give public notice, at the desire of some members, of the day upon which it appears to them expedient to meet. But there is no reason to think that the moderator of the last Assembly, by withholding his compliance with that request, can restrain the Commission from meeting, or that it would be incompetent for the commissioners to act, although circumstances should prevent a quorum of their number from assembling at the very day which he had named."¹

¹ Hill's View of the Constitution, pp. 74, 75.

A P P E N D I A.

No. I.

THE FORM OF PROCESS

IN THE

JUDICATORIES OF THE CHURCH OF SCOTLAND,

WITH RELATION TO

SCANDALS AND CENSURES,

[Ratified and approved by Act of Assembly 18th April 1707, Sess. 11.]

CHAPTER I.

CONCERNING CHURCH GOVERNMENT, DISCIPLINE, SCANDALS,
AND CENSURES IN GENERAL.

OUR Lord Jesus Christ hath instituted a government, and governors ecclesiastical, in his house, with power to meet for the order and government thereof; and to that purpose, the apostles did immediately receive the keys from the hands of their Lord and Master Jesus Christ, and did use and exercise the same upon all occasions; and Christ hath from time to time furnished some in his Church with gifts for government, and with commission to exercise it when called thereunto, and has promised his presence to be with them to the end of the world.

It is agreeable to and founded on the word of God, that some others, besides those who labour in the word and doctrine, be Church governors to join with the ministers of the word in the government of the Church, and exercise of discipline, and oversight of the manners of the people ; which officers are called ruling elders. As also that the Church be governed by several sorts of judicatures, and one in subordination to the other, such as kirk-sessions, presbyteries, provincial synods, and general assemblies.

Church discipline and censures, for judging and removing of offences, are of great use and necessity in the Church, that the name of God, by reason of ungodly and wicked persons living in the Church, be not blasphemed, nor his wrath provoked against his people : that the godly be not leavened with but preserved from the contagion, and stricken with fear ; and that sinners who are to be censured may be ashamed, to the destruction of the flesh and saving of the spirit in the day of the Lord Jesus.

Nothing ought to be admitted by any Church judicature as the ground of a process for censure, but what hath been declared censurable by the word of God, or some act of universal custom of this National Church agreeable thereto ; and the several judicatures of this Church ought to take timeous notice of all scandals : but it is judged, that if a scandal shall happen not to be noticed in order to censure for the space of five years, it should not be again revived, so as to enter in a process thereanent, unless it be of a heinous nature, or become again flagrant ; but the consciences of such persons ought to be seriously dealt with in private, to bring them to a sense of their sin and duty.

These assemblies or Church judicatures before men-

tioned have power to convene and call before them any persons within their own bounds, whom the ecclesiastical business which is before them doth concern, either as party, witness, or otherwise, and to examine them according to the nature of the affair, and to hear and determine in such cases as shall orderly come before them, and accordingly dispense Church censures.

If a person be charged with a scandal, who lives within the bounds of another parish, the kirk-session of the parish where that person resides should be desired to cause cite that person to answer before the session in whose bounds the scandal happened, and the same course is to be followed in such cases by the other judicatures of the Church, seeing, for order's sake, they should not presume to exercise their authority without their own bounds.

The minister of the word, holding an office above that of the ruling elder, cannot be liable to the censure of the kirk-session, but to the superior judicatures of the Church.

CHAPTER II.

CONCERNING THE ENTERING OF PROCESSES, CITATION OF PARTIES AND WITNESSES, AND TAKING DEPOSITIONS, AND ANENT FUGITIVES FROM DISCIPLINE.

MEMBERS of kirk-sessions are wisely to consider the information they get of scandals, and consult with their minister thereanent, even before the same be communicate to others, that thereby the spreading of the scandal may be prevented; and it may be removed by private admonition, according to our Lord and Saviour's rule, Matthew, xviii. 15, which, if amendment follow, is the

far better way of gaining and recovering a lapsed brother, whereas the needless spreading of a scandal does sometimes harden the guilty, grieve the godly, and is dishonourable to religion.

When any business is moved in a Church judicature, whether by information, petition, or otherwise, they are in the first place to consider whether the matter, in its circumstantial case, be proper for them to enter upon, and whether it be orderly brought in, and proper for them to cognosce and discuss it themselves, or prepare it for superior judicatures, and should endeavour to shorten their work as much as, with the edification of the Church, they can, especially as to the head of scandal ; but still, on all occasions the office-bearers in the house of God are to show all prudent zeal against sin.

In proceeding in all causes, where there is any person or parties concerned, the judicature is to see that, before they proceed, these persons or parties be duly sisted before them by a legal and timeous citation in writ, bearing its cause, either at the instance of a party complaining, or at least by order of the judicature ; and if they be residing within the parish, the same may be upon forty-eight hours' advertisement, and the execution of the summons bearing its cause, and made before two or three witnesses insert, is to be returned by the beadle or officer in writing, and the persons cited called at the door ; and this is especially to be observed by presbyteries and other superior judicatures of the Church.

Sometimes it may be fit that the party be privately spoken to before any citation be given or process begun, for their better gaining ; in which case the minister is to exercise his own discretion, and take the concurrence of elders and others with him. But if the party cited as above appear not, there ought to be a second, and then a

third, citation given by the order of the sessions and presbyteries, either personally, or left at their dwelling-house, before the judicature declare the person contumacious, unless the party be cited to appear before a superior judicature by reference or appeal, in which case there is not that need of so many citations before the superior judicature, the party having actually appeared before the inferior judicature; and being cited *apud acta* to appear before the superior, and the same marked in the minutes, or having been declared contumacious before the cause was brought before the superior judicature.

All citations *apud acta* are peremptory, and if instructed, infer contumacy, if not obeyed.

If the person do not appear on the third citation, or upon a citation *apud acta*, and no relevant excuse be adduced and verified, though in that case he be censurable for contumacy, yet it may be fit that the judicature proceed to take cognition, either by examining witnesses upon oath, or by other documents, of the verity of the scandals delated against him, before they censure him for contumacy.

If the party appear, then the moderator is to inform the person of the occasion of his being called, and to give him, if desired, a short note in writing thereof, with the names of the witnesses that are to be made use of.

There seems to be no need of accusers or informers in ecclesiastical processes, where the same are not raised at the instance of a party complaining formally; but the party, if cited by order of the judicature, is to answer the judicature in what is laid to his charge; yet so, that if the party cited be found innocent and acquitted, those who informed the judicatory, whether the party require it or not, ought to be noticed, for either their calumny or imprudence, as the judicatory shall find cause.

If there be witnesses to be made use of in the process, a list of their names ought to be given to the defenders some time before, or at least at their compearance, and the witnesses ought to be timeously cited to give evidence; and if they refuse, after three citations given, and executions returned, they may be proceeded with as contumacious, or, if judged needful, after the first or second citation, application may be made to the civil magistrate, that he may oblige them to appear.

Before the witnesses be judicially examined, the accused person is to be called, and the relevancy of the libel discussed; and if the defender compear, he may object against any of them, and if the objection be relevant, and made evident to the judicatory, the witnesses are to be cast; but a person's being the delator or informer doth not hinder him to be a witness, except in the case where he formerly complained for his own interest, or of pregnant presumptions of malice against the person accused.

Though there be no relevant objection, yet the witnesses are solemnly to be purged of malice, bribe, or good deed done or to be done, and of partial counsel.

The witnesses are to be examined in presence of the accused party, if compearing, and he may desire the moderator to propose such questions or cross-questions to the witnesses as may tend to his exculpation, which, if the judicatory think pertinent, are to be proposed; but no accused person is to interrupt the witnesses, or speak during the time of deposition.

If the party accused do before probation offer grounds of exculpation to be proven by witnesses, the moderator and clerk, if required, are to give warrant to cite the witnesses upon the party's charges, the relevancy of the offered exculpation being first considered and sustained by the judicatory; and if the exculpation be fully proven

as to the substance of the scandal, all further proof of the libel and accusation must there sist, and the defender is to be assoilzied; and if the libel be special as to the time and place of a fact, and the accused more pregnantly allege and clearly prove *alibi*; but if the substance of the scandal be once sustained and deponed upon, there can be no place for exculpation, unless it be as to some extenuating or alleviating circumstances not contrary to, but consistent with, the depositions already taken.

If the witnesses cannot subscribe their names to their depositions, the clerk is to mark that they declare they cannot write, and the moderator is to subscribe the same, whether they can subscribe or not.

After the depositions are ended, the parties being removed, the members of the judicature, at the same or some after diet thereto appointed, are to advise the cause, and there and then to reason the affair calmly, speaking always to the moderator one after another, without interrupting one another, using no reflecting language to, or of one another, nor too long harangues or digressions.

If any person or persons under process for scandal abscond, they shall, after being called before the judicature and not compearing, be cited first from the pulpit of the parish where the process depends and where they reside; and if they do not thereupon appear before the judicature before whom the process depends, they are, by order of the presbytery, to be cited from the pulpits of all the kirks within their bounds to compear before the presbytery; and if they do not then compear, they are to be declared fugitive from the Church discipline, and the same intimate in all the kirks within the bounds of the presbytery, desiring, that if any know of the said fugitives, they may acquaint the minister or elder of the

bounds thereof, and the presbytery are to sist there until they get further notice of these persons.

CHAPTER III.

CONCERNING SWEARERS, CURSERS, PROFANERS OF THE LORD'S DAY, DRUNKARDS, AND OTHER SCANDALS OF THAT NATURE.

IT may fall out that one single act of drunkenness or breach of the Lord's day, disobedience to parents, or of swearing, cursing, scolding, fighting, lying, cheating, or stealing, may be clothed with such circumstances as may be a just ground of process immediately, and even bring the persons guilty under the censure of the lesser excommunication, and suspension from the benefit of the sealing ordinances, and require their appearance in presence of the congregation to be rebuked, before relaxation; but the weight of this is duly to be pondered, and Church judicatures, and members thereof, are to consider whether private admonition of the persons alleged and found guilty of the above scandals, if not clothed with such circumstances, or bringing them to the public, will tend most to edification, and proceed accordingly.

But ordinarily, in all such offences, the guilty, for the first fault, should be spoken to in private by the minister or an elder, and admonished; and on promise, from a sense of guilt, to amend, they may sist there.

But if the person relapse, he should be called before the session, and if found guilty, may be there judicially rebuked, where the session, on promise, from a due sense of sin, to amend, may again sist there.

But if the person amend not after that, the session

should orderly proceed, unless repentance appear, and due satisfaction be offered, till they inflict the censure of the lesser excommunication, and suspension from the benefit of the sealing ordinances, under which the censured are to lie till amendment and reformation.

With respect to scandals, the grossness whereof makes it necessary to bring the persons guilty oftener than once before the congregation, the rules prescribed by the 4th Act of the General Assembly, *anno* 1705, are to be followed.

If the guilty persons continue in this condition, or lie under the censure of the lesser excommunication a considerable time, and yet be found frequently relapsing in these vices they are censured for, it may be constructed such a degree of contumacy, and so aggravate the crime, as to found a process of the censure of the higher excommunication, which is to be inflicted, or not, as may tend most to the reclaiming of the guilty person, and edification of the Church.

CHAPTER IV.

CONCERNING THE SIN OF FORNICATION, ADULTERY, AND SCANDALOUS CARRIAGE TENDING THERETO.

IN delations about the sin of uncleanness, it falls frequently out that when the matter is put to the strictest trial, all that can be proven is but presumptions of guilt, or scandalous behaviour, and not the act of uncleanness, the same being a work of darkness; and therefore this should oblige the kirk-session to be very cautious how to admit the public entering a process

without good warrant, where there is not a child in the case, unless the scandal be very flagrant.

Many of these actions which give occasion to the raising a scandal of uncleanness, are such as are not themselves alone publicly censurable, but to be passed by with a private rebuke or admonition.

Yet some of these actions which come under the name of scandalous behaviour, may be so lascivious and obscene, and clothed with such circumstances, as may be as offensive as the act of uncleanness itself, and as censurable.

If a married woman, whose husband hath been notoriously absent for a considerable time beyond the ordinary time that women used to go with child, be found with child, this also may give ground to a kirk-session for a process against her; but in this case judicatures should be prudent in considering well all circumstances, and whether or not the person hath been always of entire fame before, as also how the public fame now runs.

When an unmarried woman is known to be with child, the same gives ground to a kirk-session for a process against her, and after she is cited before the session and appeareth, she is to be interrogate who is the father of that child; and though in other cases the divulging of a secret may be very imprudent, and indeed the raising of a scandal, yet in this case, where there is a child, whereby there is an undeniable scandal, and the keeping secret of the father a ground of greater offence, and of suspecting many innocent persons, if she discover not the father she is to be looked upon as contumacious.

Prudence may sometimes require that the person she nameth to be the father of the child be informed thereof, and spoken to privately, and if he deny the same, he is seriously to be dealt with to confess; but if he still deny, then the session is to cause cite him to appear before them.

In this process, when the delated father compeareth, he is to be interrogate, and if he deny, he is to be confronted with the woman, and the presumptions as particularly held forth as possible; and all along there should be private treating with him, in all meekness, charity, and seriousness; and if after all this he deny, though the woman's testimony can be no sufficient evidence against him, yet pregnant presumptions, such as suspicious frequenting her company, or being *solus cum solâ in loco suspecto*, or in suspect postures, and suchlike, which he cannot disprove to the satisfaction of the session, may so lay the guilt upon him, as to show him that there appears no other way of removing the scandal but his appearance to be publicly rebuked therefor. If he will not submit himself to be rebuked as above, it perhaps may be more for edification that a true narrative of the case be laid before the congregation, and intimation given that there can be no further procedure in that matter, till God in his providence give further light, and to sist there at the time, than that an oath be pressed, and upon refusal proceed to the higher excommunication; but if the person accused do offer his oath of purgation, and crave the privilege thereof, the presbytery may (if they shall judge it for edification and removing of the scandal) allow the same, which may be to this purpose. "I, A B, now under process before the presbytery of _____, for the sin of _____, alleged to be committed by me with C D, and lying under that grievous slander, being repute as one guilty of that sin; I, for ending of the said process, and giving satisfaction to all good people, do declare before God and this _____, that I am innocent and free of the said sin of _____, or having carnal knowledge of the said C D, and hereby call the great God, the judge and avenger of all falsehood, to be witness and

judge against me in this matter, if I be guilty; and this I do by taking his blessed name in my mouth, and swearing by him, who is the great judge, punisher, and avenger, as said is, and that in the sincerity of my heart, according to the truth of the matter and mine own conscience, as I shall answer to God in the last and great day, when I shall stand before him to answer for all that I do in the flesh, and as I would partake of his glory in heaven after this life is at an end."

In taking this oath for purgation, all tenderness and caution is to be used, nor is the session to press any man thereto, but they are to deal with him and his conscience, as in the sight of God; and if he offer to give his oath, the judicature are to accept it or not as they shall see cause, and then to proceed to remove the scandal, with the advice of the presbytery, as may be most to edification. But this oath is not to be taken in any case but this, when the presumptions are so great that they create such jealousy in that congregation and session, that nothing will remove the suspicion but the man's oath of purgation, and when his oath will probably remove the scandal and suspicion: in all other cases this oath is in vain, and so should not be admitted, and never but by advice of the presbytery.

This oath for purgation is to be taken either before the kirk-session or presbytery, or the congregation, as the presbytery shall determine; and if the oath be taken before the session or presbytery, it is to be intimate to the congregation that such a person hath taken such an oath, and the party may be obliged to be present in the congregation, and may be put publicly to his own purging himself by oath, and so be declared free from the alleged scandal.

After an end is made as above with the delated father,

the woman is to be dealt with to give the true father ; and if, after all serious dealing and due diligence, she give no other, she is to be censured according to the quality of the offence confessed by her, without naming the person delated by her, the judicature reserving place for further censure upon further discovery.

If the woman who hath brought forth the child doth declare she knoweth not the father, alleging she was forced, as in the fields, by a person unknown, or any the like reason ; in these cases great prudence is to be used, the former behaviour of the woman exactly searched into, and she seriously dealt with to be ingenuous ; and if she hath been of entire fame, she may be put to it to declare the truth as if she were upon oath, but not without the advice of the presbytery, and no formal oath should be taken ; and if the woman confess she was not forced, but doth not know the man, whether married or unmarried, the same censure is to be inflicted upon her as in the case of adultery.

If a person doth voluntarily confess uncleanness, and if there be no child, and the case be brought to the kirk-session, the session is to inquire what presumptions there are of the truth of the thing confessed, or what may have moved the person to make that confession, whether it floweth from disquietude of mind, or from sinister design, as when a man suing to a woman for marriage is denied, and for revenge, or for to obtain his desire, spreads the report that he hath been guilty with her, they are to be dealt with according as the presumptions upon search are found or not.

If it be found that there is no ground for the confession, and that it is false, the person confessing is to be censured as defaming himself, and likewise as a slanderer of the other party ; and with all, application is to be made by

the session to the civil magistrate, that he may be punished according to law.

If there be need of witnesses, the directions formerly mentioned (Chapter II.) are to be followed.

When persons guilty of uncleanness live, one in one parish and another in another parish, the process against them, and censures, are to be before the session of the parish where the woman liveth, or where the scandal is most notour.

If a scandal of uncleanness be committed where neither parties reside, as if persons having their fixed residence in one parish do commit uncleanness in another parish, or perhaps in the fields, or in the time of fairs or markets; in these cases they are to be processed and censured where their ordinary abode is, except the place of their abode be at a considerable distance from the place where the sin was committed, and the scandal be most flagrant where it was committed.

When there is a scandal of uncleanness whereof persons are guilty living in different parishes, the session where the sin was committed is to acquaint the other sessions where any of the persons reside, who are *ex debito* to cause summon these persons to appear before that session where the scandal is to be tried.

When a person is convict of scandal by a session of another congregation than his own, and the censure of the lesser excommunication is inflicted, the session is to send an account thereof to that session to which he belongs; but there is no need of any other sentence of his own session to fix the censure on him, but only a public intimation thereof to be made in his own parish.

When a person is censured and absolved from his scandal in another congregation than where he lives, he is to bring a testimonial of his absolution, which is to be

intimate to the congregation he lives in, if the scandal be also flagrant there; otherwise it will be sufficient to intimate the same to the session, and the same is to be done in the case of the profession of repentance, where there has been a sentence of the lesser excommunication.

CHAPTER V.

CONCERNING APPEALS FROM A KIRK-SESSION TO A PRESBYTERY, &c.

ALL persons who judge themselves lesed by the procedure or sentence of a kirk-session, may appeal to the presbytery, by declaring and protesting at passing of the sentence, and should thereupon, according to the 8th Act of the General Assembly, 1694, give in the appeal with the reasons thereof in writ, to the moderator or clerk of the session, within the space of ten days after the time of appealing, and procure extracts thereof, and present the same to the next meeting of presbytery thereafter, if there be a competent time, at least ten days free betwixt the time of appealing and the meeting of the presbytery; and should then insist in the appeal, wherein, if the appellant fail, the appeal *ipso facto* falls, and becomes null, and the appellant is to be held as contumacious, and proceeded against accordingly by the kirk-session.

When an appeal is brought from a kirk-session to a presbytery, the presbytery is to consider whether the cause is of that nature as it behoveth at length to come to the presbytery by the course of discipline, before the final determination thereof; as if it be in a process of alleged adultery, or suchlike, then the presbytery, to

save themselves time, may fall upon the consideration of the affair, without insisting much upon the *bene* or *male appellatum*, though it seem to be preposterously appealed.

But if the cause be such as the kirk-session are the competent and proper judges of, even to its ultimate decision, and if there hath been no cause given by the kirk-session, by their breaking the rules of an orderly process, either by the course of the process, or by the incompetency of the censure, the presbytery is not to sustain the appeal.

If the presbytery do not sustain the appeal, and find there hath been some fault, passion, or culpable mistake, in the appellant, the presbytery is to inflict some censure, such as a reproof before the presbytery, or appoint an acknowledging of their precipitancy before their own session, or suchlike, on these appellers they find to have been malicious and litigious, thereby to prevent unnecessary appeals; and that besides remitting back to the session, to stand either to the censure of the session, if it be inflicted already, or to sist themselves during the process, if it be depending.

If the appeal be sustained, and yet upon proceeding on the cause the presbytery find the appellant censurable, it is always to be minded, that whatever censure be inflicted to remove the offence he hath given to the presbytery, yet the appellant, if found guilty, is to undergo a censure, either before the kirk-session or congregation he belongs to, such as the presbytery thinks he deserves, else presbyteries will be always troubled with appeals.

If, on the other hand, on trial of the process, the presbytery find the kirk-session hath unwarrantably proceeded, either in contributing to the raising of a scandal, or inflicting the censure without a sufficient cause, and thereby the appellant lesed, the presbytery is not only

to assoilzie the appellant, but to take such ways as may be proper and effectual to vindicate the appellant's innocence, and wipe off the scandal taken at him.

Herein the presbytery is to exercise great prudence, doing justice to the innocent, yet so as not to weaken the kirk-session's authority in that congregation, if in justice it can be avoided.

But such an emergent may very well occasion the presbytery's giving the minister and elders of that session suitable injunctions and rules to walk by, or private admonitions, or to call for a visitation of their session register.

The same method is to be followed in appeals from presbyteries to synods, and from synods to general assemblies.

An appeal being made by parties, should sist the execution of the sentence appealed from, only while the appeal is duly and diligently prosecute, and may thereby be determined; otherwise not, unless the judicature appealed to receive the appeal, and take the affair before them, and in that case the judicature appealed from is to sist until the appeal be discussed.

CHAPTER VI.

CONCERNING PROCESSES, WHICH NATIVELY BEGIN AT THE KIRK-SESSION, BUT ARE NOT TO BE BROUGHT TO A FINAL DETERMINATION BY THEM.

THERE are some processes, which natively begin at the kirk-session, which, for the atrocity of the scandal, or difficulty in the affair or general concern, the session

having the opportunity of frequent meetings of the presbytery to have recourse thereunto, do not determine of themselves; such as scandals of incest, adultery, tri-lapses in fornication, murder, atheism, adultery, witchcraft, charming, and heresy and error, vented and made public by any in the congregation, schism and separation from the public ordinances, processes in order to the highest censures of the Church, and continued contumacy; but the kirk-session having received information of such gross scandals, they are to weigh the same according to the rules and directions prescribed them in processes which belong to their peculiar province, and if they find good ground for a process, they are to deal with the person accused to confess that which now cannot be hid nor amended, till satisfaction be made to the Church, which, when done, the session is to refer the case, and send an extract of their procedure thereanent to the presbytery.

When there is no confession of the scandals above mentioned, the session are not to proceed to lead probation by witnesses or presumptions, till an account of the matter be brought by reference to the presbytery as aforesaid, and the presbytery do thereupon appoint the session to proceed and lead probation; and after probation is led, the same is to be brought to the presbytery, who may inflict what censure they see cause.

Sometimes it will fall out that the process is so clear, as in a case of judicial confession, that the kirk-session may summon the delinquent when before them *apud acta*, to compare before the presbytery, without previous acquainting them thereof; but where there is any difficulty, the kirk-session should inform the presbytery, and take their advice, before a party be summoned before them.

When the party or parties compare before the presbytery, if they confess and profess repentance for their sin, then the presbytery, having gravely rebuked and seriously exhorted the party or parties, are to determine the censure, and prescribe the time and place of the parties, their profession of their repentance publicly in the church of that congregation where the process began, the scandal being there to be taken away, or remit them to the session, to stand either to the censure of the session, or receive orders thereanent.

It is thought more fit that the delinquents be appointed to remove the scandal in the congregation where the offence is most flagrant, especially if they reside there, rather than in the place where it was committed, if it be not public there, and that information of the removing thereof be made in other places, if the judicature shall find it needful.

When persons censured for these grosser scandals do apply to the kirk-session for relaxation, they may both be privately conferred with, and likewise their acknowledgments heard before the session; but they ought not to be brought before the congregation, in order to their absolution, nor absolved, but by advice and order of the presbytery.

CHAPTER VII.

CONCERNING PROCESSES AGAINST MINISTERS.

ALL processes against any minister are to begin before the presbytery to which he belongeth, and not before the kirk-session of his own parish.

The credit and success of the gospel (in the way of an ordinary mean) much depending on the entire credit and reputation of ministers, their sound doctrine, and holy conversation, no stain thereof ought lightly to be received, nor when it comes before a judicature ought it to be negligently inquired into, or when found evident, ought it to be slightly censured.

And because a scandal committed by a minister hath on these accounts many aggravations, and once raised, though it may be found to be without any ground, yet it is not easily wiped off; therefore a presbytery would exactly ponder by whose information and complaint it comes first before them, and a presbytery is not so far to receive the information, as to proceed to the citation of a minister, or any way begin the process, until there be first some person who, under his hand, gives in the complaint, with some account of its probability, and undertakes to make out the libel. *2do*, Or at least do, before the presbytery, undertake to make it out, under the pain of being censured as slanderers. Or, *3tio*, That the *fama clamosa* of the scandal be so great, as that the presbytery, for their own vindication, see themselves necessitate to begin the process, without any particular accuser; but the presbytery in this case should be careful, first to inquire into the rise, occasion, broachers, and grounds of this *fama clamosa*.

All Christians ought to be so prudent and wary in accusing ministers of any censurable fault, as that they ought neither to publish or spread the same, nor accuse the minister before the presbytery, without first acquainting the minister himself, if they can have access thereto, and then, if need be, some of the most prudent of the ministers and elders of that presbytery, and their advice got in the affair.

If there shall be ground found to enter in a process against a minister, the presbytery should first consider the libel, then order him to be cited, and to get a full copy, with a list of the witnesses' names to be led for proving thereof, and a formal citation in writ is to be made either personally, or at his dwelling-house, bearing a competent time allowed to give in answer to the libel, and his just defence and objections against witnesses, at least ten free days before the day of compearance, and the citation should bear the date when given, and the names of the witnesses to the giving thereof; and the execution, bearing its date, with the names and designations of the witnesses, should be made in writ, and signed by the officer and witnesses; which being accordingly returned, he is to be called, and if he compear, the libel is to be read unto him, and he is to be inquired if he has answers to give in to the libel, that they may be read and considered, in order to the discussing of the relevancy; and if the presbytery find the same, and that there is cause to insist, they are to endeavour to bring him to a confession, whereby he may most glorify God; and if he confess, and the matter confessed be of a scandalous nature, censurable in others, such as the sin of uncleanness, or some other gross scandal, the presbytery (whatever be the nature of his penitency, though to the conviction of all) are *instanter* to depose him *ab officio*, and to appoint him in due time to appear before the congregation where the scandal was given, and in his own parish, for removing the offence, by the public profession of his repentance.

If a minister be accused of any scandal, and cited to appear before his own presbytery, and do absent himself by leaving the place and be contumacious, without making any relevant excuse, after a new public citation and inti-

mation made at his own church, when the congregation is met, he is to be holden as confessed, and to be deposed and censured *instanter* with the lesser excommunication ; but if after some time he do not return and subject himself to the censure of the Church, he may be proceeded against till he be censured with the greater excommunication, if the judicature see cause for it.

If the minister accused do appear and deny the fact after the relevancy is found, the presbytery proceeding to probation, and to find the truth of the matter, all the circumstances are to be exactly canvassed, and the accused heard to object against the witnesses. As also, he should be allowed to be present at the examination, and modestly to cross interrogate, and then the reputation of the witnesses and their liability duly regarded, and the examination considered. If, after consideration of all these, the judicature shall find the scandal sufficiently proven, they are to proceed to censure, as advised in the case of confession. See preceding page.

If the matter laid to the minister's charge be such practices as in their own nature manifestly subvert that order, unity, and peace which Christ hath established in his Church, or unsoundness and heterodoxy in doctrine, then great caution should be used, and the knowledge and understanding of witnesses much looked into ; and withal, if the errors be not gross and striking at the vitals of religion, or if they be not pertinaciously stuck unto, or industriously spread, with a visible design to corrupt, or that the errors are not spreading among the people, then lenitives, admonitions, instructions, and frequent conferences are to be tried to reclaim without cutting off, and the advice of other presbyteries sought ; and unless the thing be doing much hurt, so as it admits of no delay, the Synod or General Assembly may be advised

with in the affair, and the same intimate to the minister concerned.

If the libel and complaint brought against a minister be a multitude of smaller things laid together, as several acts of negligence, or other unsuitable actions, the presbytery in proceeding therein are to make a presbyterial visitation of that parish to which the minister belongs; and at the said visitation are first to see if any of these things now laid to the minister's charge were committed prior to the last presbyterial visitation of that parish, and whether they were then laid to his charge; and if they were not, it should be tried how they come to be laid to his charge now.

If the presbytery find these things laid to his charge to be committed since the last visitation, or find a satisfying reason wherefore they were not then tabled, they are to inquire what diligence hath been used in acquainting the minister with the offence taken at these things when first committed by him, and how far the minister hath been guilty of giving offence, after he knew offence to be taken.

It should likewise in this case be inquired, whether any of the complainers did first in a prudent private way inform any of the neighbour ministers of some of these things committed by their minister, who is now challenged, before these offences came to be so many as to merit a public and solemn trial; and accordingly the presbytery is to judge.

If the presbytery find, upon trial, the complaint to resolve upon the ministers having committed such acts of infirmity or passion, as, considering all the circumstances, may be either amended and the people satisfied, and no such offence taken, or at least not to remain, so as to hinder the minister's profiting the people, and that the offence was taken by the minister's own people only

or mainly; then the presbytery is to take all prudent ways to satisfy and reclaim both minister and people, and do away the offence.

But before a minister deposed for scandalous carriage can be restored to the exercise of the ministry, there should not only be convincing evidences of a deep sorrow for sin, but an eminent and exemplary humble walk, and edifying conversation, so apparent and convincing as hath worn out and healed the wound the scandal gave.

Immediately on the minister's being deposed by the presbytery, the sentence is to be intimate in his congregation, the church declared vacant, the planting thereof with another minister hastened, and never delayed on the expectation of his being reponed, it being almost impossible that ever he can prove useful in that parish again.

CHAPTER VIII.

CONCERNING PROCESSES IN ORDER TO THE CENSURE OF THE GREATER EXCOMMUNICATION.

SINCE there is a distinction betwixt the greater and the lesser excommunication, it seems that whatever have been the causes of the first process, yet ordinarily all processes that are in order to the greater excommunication are to be grounded on manifest contumacy, or obstinate continuance in scandalous practices; and where there is no manifest contumacy, or continuance as aforesaid, the lesser excommunication needs only have place. Yet in some extraordinary cases, the Church, according to Scripture warrant, hath summarily excommunicated persons

guilty of notour atrocious scandalous sins, to show the Church's abhorrence of such wickedness.

Even where there hath been a scandal delated, and contumacy following by not appearing, it should be considered whether any scandalous practice hath been proven or not; if not proven, then only the simple contumacy is to be proceeded against, for which it were hard to go a greater length than the lesser excommunication.

If the scandal hath been proven, and the censure of the lesser excommunication intimated, as in Chapter III., it seems most reasonable that there be no further proceeding, unless the scandal be gross, or of a heinous nature, or that it is spreading and infectious, as in heresies or schism in the church: in which cases contumacy is to be proceeded against, in order to the greater excommunication.

The kirk-session having brought the process to an intimation of the censure of the lesser excommunication, before they inflict the same, they are to refer the affair to the presbytery, bringing their whole proceedings before the presbytery in write, that the presbytery may thereby have a clear and full view of the whole affair.

The presbytery finding the kirk-session hath orderly proceeded, and that the lesser excommunication is not sufficient, and that the affair is so weighty as to oblige them to enter on the process, they are to cause their officer to cite the scandalous person.

If the party appear, then the presbytery is to proceed in the inquiry at the accused, about the scandal alleged and libelled; and if he deny it, then they are to proceed, and lead probation as in other cases.

But if the party appear not, but contemn the citation, the presbytery causeth renew the same, until he hath got three citations, and after the three citations, he is to be cited out of the pulpit: and for the further conviction of

all concerned, intimation is to be made, that the judicature will proceed and inquire into the presumptions or probation of the guilt, and this is to be done although the delinquent be absent.

Then the presbytery is to order the minister of the congregation, next Sabbath after forenoon's sermon, to acquaint the congregation what proceedings the kirk-session first, and thereafter the presbytery, hath made in the affair, and how contumacious the party was, and that the presbytery intended to proceed to the highest censure; and the minister is gravely to admonish the party (if present) to repent and submit himself to the discipline of the Church, threatening him, if he continue impenitent, that the Church will proceed; yea, though he be absent, the minister is to acquaint the people that the Church requires him to repent and submit, as above said, under the foresaid certification.

There should be three public admonitions, and a presbytery should intervene betwixt each admonition; and if, after all, that person continue impenitent or contumacious, the same is to be represented to the presbytery, who are thereupon to appoint public prayers thrice to be made, in which the minister is to exhort the congregation seriously to join with him in prayer, for the scandalous, impenitent, or contumacious person, which he is solemnly to put up to God, humbly begging that he would deal with the soul of the impenitent, and convince him of the evil of his ways.

These public prayers of the Church are to be put up three several Sabbath days, a presbytery (where its meetings are more frequent, once a-month at least) intervening betwixt each public prayer, both to show the Church's tenderness towards their lapsed brother, their earnestness to have him reclaimed, and likewise to create a greater

regard and terror of that dreadful censure both in the party and in all the people.

If, after all, the scandalous person makes no application, but continues impenitent, the presbytery, after prayer, is to pass sentence, and appoint a minister to intimate the same, and to show the presbytery's resolution to proceed upon such a Sabbath as they shall name, for pronouncing that dreadful sentence solemnly in face of the congregation, unless either the party, or some one for him, signify some relevant ground to stop their procedure.

That day being come, it were fit the minister did preach a sermon suited to that solemn occasion, or, at least, after sermon the minister should show the congregation what he is going about, introducing the narrative of the process, with a discourse concerning the nature, use, and end of church censures, particularly that of the greater excommunication, if he hath not done it fully in his sermon.

Then narrating all the steps of the process in order, showing the Church's faithfulness and tenderness towards the scandalous person, and declaring his obstinate impenitency; and that now, after all other means were used, there remained only that of cutting off the scandalous person from the society of the faithful, and intimating the Church's warrant and order to him so to do.

And before the minister pronounce the sentence, he is to pray, and desire all the congregation to join with him therein, that God would grant repentance to the obstinate person, would graciously bless his own ordinance, and make the censure effectual, both to edify others, and to be a mean to reclaim the obstinate sinner.

Then, after prayer, the minister is with great gravity and authority to pronounce the censure, showing his warrant from our Lord's command, and the apostle

Paul's direction, and recapitulating the presbytery's warrant in obedience thereunto, and resuming the scandalous and obstinate person's behaviour, whom he is to name. He, therefore, in the name and authority of our Lord and Master Jesus Christ, doth, *in verbis de præsenti* pronounce and declare him or her excommunicated, and shut out from the communion of the faithful, debarring that person from their privileges; and, in the words of the apostle, delivering that person over to Satan; which sentence is to be intimate according to the 9th Act of the Assembly, *anno 1704*.

If, after prayer, or before the censure be pronounced, the scandalous person do make any public signification of his repentance, and of his desire to have the censure stopped, the minister, upon apparent seriousness in the scandalous person, which he showeth to the congregation, may thereupon delay pronouncing the sentence, till he report to the presbytery at their next meeting, who are then to deal with the scandalous person as they shall find cause.

After the pronounciation of this sentence, the people are to be warned, that they hold that person to be cast out of the communion of the Church, and that they shun all unnecessary converse with him or her; nevertheless excommunication dissolveth not the bonds of civil or natural relations, nor exempts from the duties belonging to them.

Although it be the duty of pastors and ruling elders to use all diligence and vigilance, both by doctrine and discipline respectively, for preventing and purging out such errors, heresies, schisms, and scandals, as tend to the detriment and disturbance of the Church, yet because it may fall out, through the pride and stubbornness of offenders, that these means alone will not be

effectual to that purpose, it is therefore necessary, after all this, to employ the aid of the civil magistrate, who ought to use his coercive power for the suppressing of all such offences, and vindicating the discipline of the Church from contempt.

CHAPTER IX.

CONCERNING THE ORDER OF PROCEEDING TO ABSOLUTION.

IF after excommunication the signs of repentance appear in the excommunicated person, such as godly sorrow for having incurred God's heavy displeasure by his sin, occasioned grief to his brethren, and justly provoked the Church to cast him out of their communion, together with a full purpose of heart to turn from his sin unto God through Christ, and to reform his life and conversation, with a humble desire of recovering peace with God and his people, and to be restored to the favour of God and light of his countenance, through the blood of Jesus Christ, and to the communion of the Church; and the presbytery, upon his application, be satisfied therewith, and judge that he ought to be absolved, and thereupon give warrant for his absolution, he is to be brought before the congregation, and there also to make free confession of his sin, and sorrow for it, to call upon God for mercy in Christ, to seek to be restored to the communion of the Church, promising to God, through grace, new obedience, and more holy and circumspect walking as becomes the gospel; and that this appearance before the congregation be as often as church judicatures shall find may be for edification and trial of the professing

penitent's sincerity ; and being satisfied in this, then the minister and congregation are to praise God, who delighteth not in the death of a sinner, but rather that he should repent and live ; as also for blessing the ordinance of excommunication, and making it effectual by his Spirit to the recovering of this offender, to magnify the mercy of God through Jesus Christ, in pardoning and receiving to his favour the most grievous offenders, whensoever they unfeignedly repent and forsake their sins. But before the minister proceed to absolution, he is to pray with the congregation to this effect :—That the Lord Jesus Christ, Prophet, Priest, and King of his Church, who, with the preaching of the gospel, hath joined the power to bind and loose the sins of men ; who hath also declared that whatsoever by his ministers is bound on earth shall be bound in heaven, and also that whatsoever is loosed by the same shall be loosed and absolved in heaven, would mercifully accept his creature N, whom Satan of long time hath holden in bondage, so that he not only drew him to iniquity, but also so hardened his heart that he despised all admonitions ; for the which his sin and contempt, the Church was compelled to excommunicate him from the society of the faithful ; but now seeing the Holy Spirit by his grace hath so prevailed, that he is returned and professeth repentance toward God, and faith toward our Lord Jesus Christ, that it may please God by his Spirit and grace to make him a sincere and unfeigned penitent, and for the obedience of our Lord Jesus Christ unto death, so to accept of this poor believing and returning sinner, that his former disobedience be never laid to his charge, and that he may increase in all godliness, so that Satan in the end may be trodden under foot by the power of our Lord Jesus Christ, and God may be glorified.

the Church edified, and the penitent saved in the day of the Lord."

Then shall follow the sentence of absolution, in these or the like words :—"Whereas thou, N, hast for thy sin been shut out from the communion of the faithful, and hast now manifested thy repentance, wherein the Church resteth satisfied, I, in the name of the Lord Jesus, before this congregation, pronounce and declare thee absolved from the sentence of excommunication formerly denounced against thee, and do receive thee to the communion of the Church, and the free use of all the ordinances of Christ, that thou mayest be partaker of all his benefits to thy eternal salvation."

After this sentence of absolution, the minister speaketh to him as to a brother, exhorting him to watch and pray, and comforting him as there shall be cause ; the elders embrace, and the whole congregation holdeth communion with him, as one of their own ; and the absolution should be intimate in all the churches where the excommunication was intimate.

No. II.

THE PRESBYTERY

ACTING IN A

CIVIL CAPACITY.

THE jurisdiction of presbyteries in the building and re-
Church. pairing of churches has been exercised for a
long period of time ; and although questioned
in some instances, was completely established in the
important case of Dunning, 1807, and has not since
been objected to.

When a church has become ruinous, the minister of
the parish applies, by petition, to the presbytery of the
bounds, to hold a meeting in his parish, for the purpose
of inspecting the church, and taking the necessary steps
of having it rebuilt. The presbytery appoints a visita-
tion of the parish to be held, and enjoins that edictal
intimation of that appointment be made from the pulpit,
that letters be written to acquaint non-resident heritors,
and skilful tradesmen be warned to attend on the day of
meeting.

It is usual for the minister to give notice of the meet-
ing by letter to absent heritors ; but it does not appear
that there is an actual obligation on him to do so. It is
presumed, however, that the presbytery will not grant
the prayer of his petition, if he has not previously cor-
responded with his heritors on the subject.

In most cases, the application for a meeting of presby-
tery is with the concurrence of one or more of the heritors

of the parish ; and it is always desirable that it should be so. But the presbytery is warranted to proceed, although the minister alone commences the suit.—Tingwall, 1787. Dunning, 1807.

The tradesmen are often selected by the minister. Sometimes they are expressly named by the presbytery. It is right that the heritors should be satisfied with regard to the tradesmen employed, and should nominate, if they choose, one or more for themselves. The expense incurred by the attendance of the tradesmen devolves upon the heritors.

When the presbytery meets, the tradesmen are put upon oath, and desired to inspect the church, and to say whether a new one is necessary or not. This report is made out in writing, and subscribed by them. If they condemn the church, the presbytery, upon their report, pronounces a sentence to that effect, and orders plans, and specifications, and estimates to be given in by the heritors. Of all these the presbytery must judge. They may also, on failure of the heritors to produce them, procure plans and estimates themselves.—Anwoth, 1812.

It is usual to leave it to the heritors to contract with a builder, and to carry on the work under their own inspection ; and they are so much interested in having the work well done, that it may be considered safe as well as courteous for the presbytery to make an appointment to that effect. But the presbytery has the power to contract ; and in the cases of Muirkirk, Falkirk, and Dunoon, when the heritors were tardy in their proceedings, the Court of Session authorised the respective presbyteries, in the event of their continuing to be dilatory, to carry on the buildings according to the plans that had been approved of.

It is the presbytery also which assesses the heritors for

the sum required, and appoints both a collector to uplift it, and the instalments in which it is to be paid. The assessment includes what is necessary for defraying the expense of plans and specifications, remunerating the tradesmen for their attendance, and giving a fee to the presbytery clerk. These different items are particularly mentioned.

In fixing the assessment, it is not an unusual mode to take some one of the estimates given in as a ground for judging of the probable amount that will be required, and to decern against the heritors for a sum which shall not exceed that amount. But in the case of Kilmalcolm, it appears that the presbytery of Paisley were required to alter their decree against the heritors of that parish, because it proceeded not upon a real, but only upon a probable estimate. In consequence of this decision of the Court of Session, presbyteries will henceforth have to see that the estimates which are laid upon their tables are such as those who give them will be ready to act upon, if they are contracted with ; and their decernitures must be not for a sum which will probably cover the whole expense, but for the sum which will be actually required.

The presbytery has the power of determining the site of a new church. But a change of situation should not be made without strong grounds.—Falkirk, 1809.

The size of a new church it is an important matter for the presbytery to settle. The judgment in the case of Tingwall, 1787, lays down the rule to be followed. Two-thirds of the examinable persons in a parish, *i. e.* of such as are twelve years of age, must be accommodated ; and each person is considered as requiring eighteen inches for sitting-room.

When the building is finished, the presbytery meet again at the request of the minister of the parish, and

tradesmen are appointed to inspect it, and to report if the work is rightly executed. If their report is favourable, the church is taken off the contractor's hands ; if otherwise, the presbytery delays its final procedure, till the deficiencies pointed out are supplied.

When a church stands in need of repairs, the proceedings throughout are exactly of the same kind with those which have been described above.

Notwithstanding the decisions which have been given in the cases of Dunning and Lerwick, doubts are entertained of the competency of a presbytery to order the enlargement of a church, when it is not positively ruinous, however insufficient it may be to accommodate two-thirds of the examinable persons in the parish. The question of competency is considered as never having been fairly tried ; and the doctrine which in the mean time is maintained upon the subject is, that a presbytery has no right to order the enlargement of a church, except when the church is to be rebuilt.¹

¹ One consequence of this uncertainty about the power of presbyteries to add to the provision which already exists for giving attendance on the ordinances of religion, is a lamentable deficiency of church accommodation throughout the country. Parish churches were originally built for a population very much inferior in numerical extent to that which now covers the face of the land ; and they can admit only a small proportion of those to whom it is of the utmost importance that religious instruction should be regularly addressed. It was a very inefficient remedy which chapels of ease supplied. They could not be supported without considerable funds ; and in how many quarters, where thousands are perishing for lack of knowledge, is it utterly impossible that the requisite funds can be raised ! The same circumstance operates as a powerful check upon the erection of dissenting meeting-houses ; so that, however earnest in the dissemination of religious instruction dissenters may be, they are still insufficient to minister to the spiritual wants of multitudes in every town, but especially in manufacturing districts, who have no place of worship to attend, and to whom the truths of Christianity, and its sacred

When a presbytery has given a decision in a case respecting the building or repairing of a church, it cannot

obligations, may be said to be wholly unknown. This is a state of things which ought to awaken the attention of every thinking man. It is melancholy and distressing in respect of those who, though living in a Christian land, are debarred from the means and opportunities of religious instruction, and are allowed to pass through the world, and to quit it, without Christ, without God, and without hope. It is fearful in respect of our country, which thus contains in its bosom congregated hosts, to whom the precepts of religion have never been addressed, and who neither feel nor even outwardly acknowledge the salutary restraints by which it checks the wickedness of man, and gives to human laws most powerful support. Individual exertion, contributions in money, the adoption of plans for the erection of places of worship, may do somewhat to lessen the evil that exists in consequence of the vast disproportion between the population of the country and the accommodation provided for their receiving religious instruction. No means should be neglected, however trifling it may seem, by which this object can be advanced. But if public worship is of service to the community, by the sentiments which it cherishes and the habits which it forms, it is the Government above all which is interested in correcting the existing evil. It is Government, too, which alone, by revising the laws respecting the erection of churches, and by grants of money, can do anything effectual for increasing the size and the number of our churches; and its attention, notwithstanding what has been done for the Highlands of Scotland, cannot be too urgently called to the want of church accommodation which is felt, particularly in the western counties. The resources of the country are not so far spent as to be incapable of affording any relief from this great and growing evil. And to what purpose can they be more fitly applied, than in training the people to be pious and moral, furnishing them with the best qualifications for the proper discharge of their duties, and teaching them those truths which will dispose them, even under the severest trials, to "lead a quiet and peaceable life in all godliness and honesty?"

One boon to the Lowlands of Scotland the Government was willing to have given. But the diversity of opinion which prevailed respecting the arrangements that were to follow prevented it from being bestowed. This is unhappy, as it may render Government less willing to attend to the wants of the country, and more inclined to suppose that these wants, which appeared to be forgotten in the opposition that was made to the plan for relieving them in part, cannot be

appear as a party in the Court of Session in support of its own judgment.—Falkirk, 1807.

very grievously felt. But it should be a lesson for the future. The object in view is so important that almost any concessions should be made to attain it.

Note to Third Edition.—Since the publication of the former editions of this work, the steps which the General Assembly has taken, with reference to the spiritual destitution that prevails throughout the land, have been eminently successful. The country has been roused to a sense of the misery and danger which result from the mass of the people being without the means of religious instruction ; and private liberality has already erected a number of places of worship where the want of them was felt to be greatest. The last Report of the General Assembly's Church Extension Committee shows, that eighty-nine new churches have been built or are in progress. The inquiries that have been made, however, still develop a want of church accommodation, and an extent of ignorance and of utter disregard of religion, that cannot be contemplated without the utmost sorrow and alarm. The claims of the Church upon Government to consider the religious state of the community, and to provide for supplying it with the means of grace, are tenfold increased in consequence of the statistical information that has been obtained, and the unequivocal demonstration that has been made by the members of our Church, of an urgent necessity for additional places of worship, and additional ministers to superintend the religious concerns of the people.

Note to Fourth Edition.—The Report of the General Assembly's Church Extension Committee for 1839, shows that two hundred and one new churches have been built or are in progress ; but that the people who most need to be assisted, because they can pay nothing for places of worship to themselves, remain to be provided for.

Note to Fifth Edition.—Since the last edition was published, a considerable change has taken place on the state of the country in regard to church accommodation. Some hundreds of places of worship have been erected in consequence of the secession in 1843. Had the sites of all of them been judiciously chosen, the advantage to the community would have been greater than it actually is. But even allowing that a great addition has thus been made to the means of religious instruction, that addition is, after all, but as a drop in the bucket. The population has in the mean time been rapidly outgrowing all the provision that exists for its moral and religious training. In the larger towns, and in the mining and manufacturing districts, the amount of spiritual destitution is fearfully great ; and the worst

The churchyard wall comes under the jurisdiction of the presbytery ; and the proceedings in regard to it are similar to those which have been mentioned in regard to the church.

In the matter of churches, as well as of manses and glebes, it is of great importance for presbyteries to preserve a good understanding with the heritors, and, if possible, to obtain their concurrence ; and it will often happen that, in the exercise of a prudent discretion, they will find it advisable, for securing the object in view, not to press it at a time which may be peculiarly inconvenient for those upon whom it is to lay an additional burden, and even to make concessions respecting it, which do not compromise the rights or injure the interests of the Church.

When opposition is made to just claims by any of the heritors of a parish, a presbytery cannot be too particular in having all its proceedings, relative to these claims, strictly conformable to law

consequences may be apprehended, if exertions are not made to raise up in these quarters churches which may serve as channels for conveying to an outcast and neglected people the humanising and ennobling truths of the gospel. These will be most effectually brought home to them by having churches not only erected but endowed, pastors rendered independent of their people in pecuniary matters, and pastoral instruction and pastoral superintendence combined with the labours of an efficient eldership. It is the parochial system in all its completeness which our Church is desirous to introduce everywhere. Let means be supplied for extending it. Let it be rightly and faithfully administered ; and, under the favour of God, it will prove still, as it has hitherto proved, a blessing to our land. Unpromising as the moral aspect of many parts of the country appears to be at present, we may yet hope that "the wilderness and the solitary place shall be glad, and the desert shall rejoice and blossom as the rose."

Note to Sixth Edition.—Let the Endowment Scheme be heartily supported, and carried into effect, and the blessing to the land will be great.

The jurisdiction of presbyteries in the case of manses is still more fully acknowledged than in that of churches.

When a new manse is required, the same preliminary steps are to be taken as have been described in regard to a new church. The report of tradesmen upon oath is the ground of the presbytery's finding a new manse to be necessary. Plans, &c. are in consequence ordered to be given in, a contract is entered into, and a decree is pronounced against the heritors, for the sum necessary to defray the expense of the building, and the other contingent expenses.

In the case of manses, as of churches, a presbytery may proceed notwithstanding the absence of the heritors.—Lochmaben, 1712.

It belongs also to the presbytery to fix the site of a new manse.

Presbyteries have no definite rule to guide them with regard to the sum for which they should decern against the heritors, when they find a new manse to be necessary. The Act 1663 enjoined, that the expense of a manse should not exceed £1000 Scots. But since the decision of the Court of Session in the case of Inverury, 1760, the statutory allowance has not been adhered to, and such manses have been given to ministers as were suited to their benefices, without regard to the precise amount of the expense. The improved style of accommodation throughout the country, and the kind of manses obtained by neighbouring clergymen, have always been taken into consideration.

The right of a manse includes, not only the right to a dwelling-house, but also the right to a garden, a stable, a barn, a byre, and other accommodations for the family of one who occupies some acres of ground. These all come under the jurisdiction of the presbytery. Half an

acre of ground is allowed for the garden, and the site of the manse and offices. The presbytery has power to discern for a garden wall.

When repairs are needed, the same steps are taken as when a new manse is to be built. The extent of the repairs that are ordered is determined by the report of tradesmen.

It is not unusual, at the time of granting repairs, to make additions to a manse which is small or deficient in accommodation. The proposal of such additions comes with best grace from the heritors themselves, or at least with their concurrence. It rarely happens that moderate additions, which are only designed to make the manse a comfortable residence for the minister, are objected to by the heritors of a parish; and the cases of Cathcart, Kirkliston, and Anwoth, show that such additions, although not expressly warranted in terms of law, are agreeable to the principles which have long guided the decisions of the Court of Session in all matters affecting the civil interests of the clergy.

Heritors may insist, when a new manse has been built, or when an old one has been completely repaired, to have it declared free, so as to throw upon the incumbent the expense of all ordinary repairs on it, and to make him or his executors responsible to them for its state. But a presbytery must be satisfied that the manse is in all respects sufficient, before it subjects any of its members to a burden which may be a heavy one. And notwithstanding its having done so, it will not hesitate to order a new manse to be built, or repairs to be made, by the heritors, if, through the necessary decay occasioned by time or the weather, it shall have ceased to afford a sufficient or comfortable dwelling to the minister.—Botriphnie, 1805.

The jurisdiction of Presbyteries in regard to glebes rests upon the same ground with that in regard to manses.

It belongs to presbyteries to designate glebes, and the preliminary steps for doing so are the same as in the case of building a manse. Instead of skilful tradesmen, two or three of the most knowing and discreet men of the parish, or men of that description, whether belonging to the parish or not, are to be called to the meeting of presbytery, in order to ascertain the measurement and the quality of the ground designed.

Four acres of arable ground have, from 1572, been the minimum legal allowance for a minister's glebe; and it is provided by the Act 1606, that where there is no arable ground, sixteen souns of grass shall be given for a glebe, a soun of grass being as much as will pasture ten sheep or one cow.

Originally, it was only out of Church lands, or lands which had belonged to the Church, that the designation could be made; and of these lands, such as were *maist ewest* and adjacent to the church were to be designed. Between 1644 and 1663 temporal lands also were made liable to the designation, relief being given from the whole heritors of the parish to the heritor from whose property the glebe was taken. In 1663, the acts which made temporal lands subject to the designation were rescinded; but it does not appear that the designation of a glebe out of temporal lands, when there were no Church lands in a parish, was ever objected to. A difference of opinion prevailed, as to whether temporal lands could be designed when there were Church lands in the parish; but latterly the distinction between the two kinds of lands has been completely disregarded in the designation of glebes, the heritors whose lands are designed being entitled to pro-

portional relief from the other heritors of the parish.—Kingsbarns, 1799.

If the glebe of a minister is deficient in the legal extent, the presbytery, at his request, and after the proper preliminary steps have been taken, may design as much land as will make up the deficiency. It may do the same also, if the half acre allowed for the manse and garden is deficient. But neither in these cases, nor when the quality of the land of which a glebe is composed is bad, is a presbytery entitled to make a new designation of the whole glebe.

In designing a glebe, a presbytery must keep in view that the interest or conveniency of the minister is not the only thing to be attended to. It is provided by statute that the glebe should be near the manse. But other considerations must also be taken into account in designing it. In the case of Dunfermline, 1813, when the presbytery designed for a glebe four different portions of ground, all situated near the church, but some of them at a considerable distance from each other, the designation of the presbytery was set aside by the Court of Session, and a remit was made to the Sheriff of the county to inspect the grounds, and report with respect to another situation for a glebe.

Excambions of glebes must be sanctioned by the presbytery. But even the sanction of the presbytery does not give validity to the alienation by an incumbent of either glebe or manse.—Falkland, 1793.

The minerals of a glebe are worked at sight of the heritors and presbytery, and the proceeds are placed under their management for behoof of the incumbent for the time.

Ministers who are entitled to an arable glebe—that is, all ministers who have a landward parish—are also, Grass glebe. by Acts 1649 and 1663, allowed to have grass for one horse and two cows, over and above their glebe.

It belongs to presbyteries to design the grass glebe, and the proceedings in regard to it are the same with those which are followed in regard to the arable glebe.

In designing a grass glebe, the presbytery must take only Church land. When there are no Church lands, the Act 1663 ordains the sum of £20 Scots, or £1, 13s. 4d. sterling, to be paid yearly to the minister, in lieu of a grass glebe. This small sum, so disproportioned now to the purpose for which a grass glebe is given, the presbytery has no power to increase.

The difficulty in regard to grass glebes arises from the nature of the land that must be designated. Not only must the land be Church land, it must also be not arable, but in a state of pasturage. What are arable and what are pasture lands, it is not always easy to determine. But the principle which, in general, seems to have guided the decisions of the Court of Session upon this subject is, that wherever lands are in a state proper for arable cultivation at the time of designation, they are not liable to be designated.

A presbytery is not prevented from designing a grass glebe, although the arable glebe exceeds four acres, or contains in it pasture land as well as arable. Four acres is the smallest legal allowance for a glebe, and it is easy to suppose that a larger allowance may in many instances have been given, or that what is now the arable glebe may be larger from the incumbent's having originally had sixteen souns of grass awarded to him as his glebe, and from the land, which was then only fit for pasture, having been brought by cultivation into a proper

state for tillage. The only point for a presbytery to ascertain is, whether or not a grass glebe, or the £20 Scots in lieu of it, was already given.

When a minister applies for an augmentation of his stipend, he is required by Act of Parliament, 1808, not only to cite the heritors of his parish, but also to cite the moderator and clerk of the presbytery of the bounds, and to furnish them with a statement of the amount of his present stipend, and of the addition to the stipend which he means to crave, in order that the presbytery, if they shall judge proper, may appear as parties in the process. If the presbytery does not enter an appearance, the minister must forthwith transmit to the moderator or clerk of the presbytery a certified copy of the interlocutor pronounced by the Court. And it is competent for the presbytery to enter an appearance within five months after such interlocutor is pronounced, and to show, if they shall see cause, that the decree of modification which has been pronounced is collusive and prejudicial to the benefice. When the presbytery enters an appearance in a process of augmentation, it is competent for the Court to subject the minister, insisting in such process, in the whole, or any part of the expenses incurred by the presbytery.

By the laws of the Church, all schoolmasters and teachers of youth are amenable to the ecclesiastical judicatories for their conduct and doctrines. These laws are confirmed by Act of Parliament. By the Act 1803 the judgment of presbyteries in regard to the conduct of schoolmasters is declared to

be final. If they proceed to deposition, the sentence is rendered effectual by the sheriff of the county. They must proceed by libel ; and although their sentence is final, yet to render it valid the previous steps must be regular and properly taken.

Various cases have recently occurred, in which the sentences of presbyteries against schoolmasters have been set aside, and much expense has been incurred, in consequence of irregular proceedings. It is consequently essential that presbyteries should attend to have their procedure in libels against schoolmasters from beginning to end conducted with all the formalities of the civil and criminal courts. Every page of the proof should be signed by the witnesses as well as by the moderator and clerk. So should any marginal notes that are made. If there are erasures in any part of the proof, or vitiations of it, these must be noticed at the end of the depositions where they occur. These are instances of things that need to be attended to. But in any case of libel a presbytery will do well to obtain the assistance of a professional agent, who is thoroughly acquainted with the modes of proceeding in civil and criminal courts.

In the event of a vacancy in the offices both of minister and of schoolmaster of a parish, it is the presbytery which appoints a meeting of the heritors to elect a schoolmaster ; and when the heritors and minister fail to elect one within four months from the date of the vacancy, the presbytery is required to apply to the commissioners of supply, who have power to elect a schoolmaster *jure devoluto*, at a meeting called by the convener upon thirty days' notice.

The schoolmaster, when elected, brings to the presbytery the minutes, or an extract or certified copy of the minutes of his election, and attestations of his having

taken the oaths to Government. He is examined by the presbytery as to character and sufficiency for the office; they see him sign the Confession of Faith, or formula of our Church; and, provided they are satisfied with his qualifications, they furnish him with an extract from their minutes, bearing that he had appeared, produced the attestations required, and been found qualified for discharging the duties of the office to which he had been elected. This extract completes his right to the emoluments of his office.

If the person elected is not found duly qualified, the judgment of the presbytery cannot be reviewed or suspended by any other court; and the heritors and minister must proceed to a new election, which they are required to complete within the four months from the date of the vacancy.

Presbyteries have power to correct what is wrong in the hours of teaching in parish schools, and the length of vacation that is annually given.

LIST

OF

ACTS OF ASSEMBLY REFERRED TO.

- Act 1596. Visitations Presbyterial of Parishes.
— 1638. Session Books to be tried by Presbyteries.
— 1639. Gradation of Courts to be observed in making Appeals.
— 1642. Transportation.
— 1643. Gradation of Courts to be observed in making References.
— 1644. Dissents.
— 10, 1646. Visitations Presbyterial.
— 4, 1694. Time of Lodging Commissions.
— 5, ——— Commissioners to General Assembly.
— 6, ——— Transportations.
— 8, ——— Appeals.
— 3, 1697. Enrolling Names of Probationers.
— 9, ——— Barrier Act.
— 11, 1698. Subscribing of Synod Records.
— 4, 1699. Annexation of Parishes.
— 9, 1700. Revising of Registers.
— 11, ——— Subscribing the Confession of Faith.
— 13, 1703. Disjunction of Parishes.
— 7, 1704. Citations in Transportations.
— 8, 1706. Revising of the Commission Record.
— 9, ——— Anent Registers.
— 16, ——— Visitations Presbyterial.

- Act 10, 1707. Erection of Presbyteries.
 — 11, 1707. Form of Process.
 — 15, ——— Against Innovations in the Worship of God.
 — 6, 1708. Suppressing Schisms and Disorders in the Church.
 — 10, 1711. Questions to Ministers and Probationers, and Formula.
 — 4, 1712. Concerning admission of Infants to Baptism.
 — 6, ——— Commissioners to General Assembly.
 — 9, 1722. Duty of Elders and Deacons.
 — 5, 1724. Erection of Presbyteries.
 — 5, 1732. Appeals in Settlements.
 — 9, 1736. Lists of Probationers to be presented to the Assembly.
 — 4, 1739. Anent Ministers who seceded from the Church.
 — 4, 1744. Separate Register.
 — 9, 1745. Form of Process applied to Probationers.
 — 4, 1753. Anent Lawyers who are Members of Court.
 — 5, 1754. Ministers by Ordination or Admission, Members of Presbytery and Synod.
 — 4, 1757. Separate Register.
 — 8, 1759. Against Simony.
 — 6, 1761. Anent taking a Blind Student on Trials.
 — 6, 1763. Anent Applications for the Public Money.
 — 12, 1776. Anent Ruling Elders.
 — 9, 1779. Anent Ordination, and Licences obtained without the bounds of this Church.
 — 8, 1783. Anent Lawyers who are Members of Court.
 — 10, ——— Forms of Commissions.
 — 7, 1784. Interim Act anent Ordained Assistants.
 — 9, ——— Ordination without relation to a particular Charge.
 — 5, 1799. Anent unqualified Ministers and Preachers.
 — 12, ——— Presbyterial Examination of Schools.
 — 5, 1806. Ordained Assistants and Successors.
 — 8, 1813. Probationers.—Trials for Licences.
 — 10, 1816. Ruling Elders.
 — 6, 1817. Anent Union of Offices.
 — 7, 1820. Presbyterial Examination of Schools.
 — 8, ——— Anent Vacant Parishes.

- Act 8, 1826. Anent Attendance at the Divinity Hall.
- 8, 1830. Presbytery of Shetland divided into the Presbyteries of Lerwick and Burravoe.
- 6, 1832. Standing Orders of the Assembly.
- 9, 1833. Attendance of Students on Church History and Hebrew.
- 8, 1834. Erection of the Presbytery of Greenock.
- 10, — Standing Orders of the Assembly.
- 11, 1835. Form of Process.
- 13, — Standing Orders of the Assembly.
- 15, — Examination of Students resident beyond the bounds of the Church of Scotland.
- 19, — Number of Commissioners sent from Presbyteries.
- 6, 1836. Erection of the Presbytery of Islay and Jura.
- 7, — Erection of the Presbytery of Weem.
- 10, — Critical Hebrew Exercise.
- 8, 1837. Examination of Students by Presbyteries.
- 9, — Examination of Students by Presbyteries.
- 11, 1838. Commissioners to General Assembly.
- 13, — Standing Orders of the Assembly.
- 7, 1839. Commissioners to General Assembly.
- 12, — Ruling Elders.
- 11, 1841. Anent Commissions to the Assembly.
- 1842. Mode of Constituting the Meetings of the Assembly.
- 14, 1843. Examination of Students.
- 18, 1845. Examination of Students.
- 14, 1848. Interim Acts.
- 16, — Privy Censures.
- 9, 1850. Examination of Students.
- 11, — Induction of Ministers.—Interim Act.
- 12, — Additional List of Witnesses in Libel.
- 13, — Revision of Libel by Procurator.
- 14, — Standing Orders.—New Churches.—Relevancy of Libel, &c.
- 15, — Admission of Ministers and Licentiates of Dissenting Bodies.

I N D E X.

- Admission of a minister to a parish 70—makes the minister a member of the presbytery and synod of the bounds, 76.
- Agents, not allowed in sessions, 24—but in the higher courts, 41.
- Appeal, must be made immediately, 25, 38—reasons of, must be lodged in ten days, 38—effect of, 40—when frivolous, *ib.*
- Assembly, General, time of meeting of, 95—number of members of, *ib.*—commissions to, when lodged and examined, *ib.*—election of moderator and clerks, 98—appointment of committees of, 99—time of their meeting, *ib.*—receiving their reports, 100—arrangement of business, *ib.*—its legislative power, 104—its executive, 105.
- Assistant, ordained, not constituent member of session, 3—presides only in room of the minister, *ib.*—a member of the other church courts only in his absence, *ib.*
- Business of kirk-session, 11 — presbyteries, 45 — provincial synods, 90—General Assembly, 102.
- Call, moderating in a, 65—signatures to, *ib.*—accepted by presentee, 68.
- Certificates of character granted by kirk-sessions, 11—from professors of divinity for students upon trials, 47.
- Chapels of ease, 77.
- Church, proceedings of presbytery relative to, 142—when it is to be rebuilt or repaired, 145.
- Churchyard wall, 148.
- Circular letters, when written, 48.
- Citation to parties or witnesses before a kirk-session, by whom issued, 16—how drawn up, *ib.*—how delivered, *ib.*—how often repeated, *ib.*—what peremptory, 16—to a minister by a presbytery, 56.

- Committees, for overtures and bills, 90, 99.
 Communicants, how admitted, 13.
 Communion rolls, 11.
 Complaint, by whom made, 25, 34—effect of, 35—reasons of, *ib.*
 Contumacy, how it is noticed, 17.
 Counsel, must not be members of court, 41.
- Demission, presbytery elder's, 30,—minister's not accepted when he has followed divisive courses, 61.
 Deposition of minister, act of, preceded by prayer, 60—not executed by a presbytery in absence of the party, *ib.*
 Discipline, subjects of, 15—how administered, 21—public appearances, *ib.*
 Dissent, by whom, and when given in, 25, 33—reasons of, how disposed of, 34.
 Dissenting teachers, when desiring to be taken on probationary trials, 51—admitted into the church, 80.
- Edict, nature of, 6—time of serving, for elders, *ib.*—for ministers, 68.
 Elders, number of, in a parish, 4—qualifications of, 5—how elected, *ib.*—in the case that there is no session, 9—questions put to them before ordination, 7—from another parish, 9—non-residing, *ib.*—when elected for presbytery or synod, 29—for General Assembly, 84.
 Evidence, how taken, 18—in presbytery, 58.
 Examination of students before entering the divinity hall, and during their attendance upon it, 45—for probationary trials, 48.
 Excommunication, lesser, inflicted by session, 23—greater, not without the direction of the presbytery, *ib.*—how relieved from, *ib.*
 Execution of summons, must be returned to the session, 16—to the presbytery, 56.
 Extracts, 41.
- Fama clamosa*, rise, occasion, broachers, and grounds of, must be inquired into, 53—no libel can be served on a minister unless there is a *fama* against him, *ib.*
 Formula, for elders, 8—for probationers and ministers, 51.
 Fugitives from discipline, who are, 23—how treated, *ib.*
- Glebe, proceedings of presbytery relative to, 151—when designation to be made, *ib.*—arable glebe, *ib.*—excambion, 152—grass, 153.
- Jottings, whether extracts allowed from, 41.

Jus devolutum, when it takes place, 63.

Keys of church, with whom lodged when a parish is vacant, 63.

Letter of acceptance, when given in, 63.

Libel, at whose instance raised, 53—when by the presbytery, *ib.*—how drawn up, 55—by whom subscribed, *ib.*—copy of, to be given to the minister, *ib.*—original one not to be withdrawn for a new one, 56—relevancy of, to be first discussed, 57—irrelevancy of some parts does not stop procedure upon others, *ib.*—consequences of, when proven, *ib.*—when it respects smaller things, 56.

License, trials for, 48—extract of, to be furnished, 51—obtained without the bounds of this Church disqualifies a presentee, 69.

Manse, proceedings of presbytery relative to, when it is to be rebuilt, 149—or repaired, *ib.*—or added to, 150.

Marriage, certificate of proclamation of, 12.

Meeting, times of, of the kirk-session, 1—the presbytery, 87—the synod, 89—the General Assembly, 95—the commission, 108—*Pro re natá* of the presbytery, 87—of the synod, 94.

Members of Assembly, when elected, 84—commissions to, 85—their number, 95.

Minutes, how to be kept, 27—how revised, 92, 102—whether signed, 28, 107.

Moderator of kirk-session, 2—of presbytery, 44—of synod, 90—of the General Assembly, 98—of the commission, 109.

Motions, orders respecting, in the Assembly, 103.

New churches, 79.

Oath of purgation, 19—woman's oath not allowed to be taken, 20.

Objections to a presentee, when given in, 66—proceedings of presbytery in regard to, *ib.*

Orders, standing, 103.

Ordination of elders, 7—of ministers, 72—to a parish, makes the minister a member of the presbytery and synod, 76—without relation to a particular charge, *ib.*—of a minister going to foreign parts, *ib.*

Overtures, deliverance upon, 82.

Patron, must qualify to Government, 63.

Petitions, how to be drawn up, 31.

Presbytery, how erected, 43—of whom composed, *ib.*—its business, 45—times of meeting of, 87—necessary to appoint next meeting of, *ib.*—*pro re natá* meeting of, *ib.*

- Presentation, within what time to be lodged, 63—in whose favour to be given, *ib.*—cannot be objected to by heritors, 64.
- Presentee, his qualifications, 64—letter of acceptance, *ib.*—appointed to preach in the vacant parish, *ib.*—whether proceedings are sisted in case of the presbytery being dissatisfied with his moral conduct or his doctrinal sentiments, 67—required to signify acceptance of the call, 68.
- Presumptions of guilt, what are, 19.
- Privileges, Church, granted by the kirk-session, 12—cannot be refused merely on suspicion of improper conduct, or ignorance of particular views of Christian doctrine, 13.
- Probationers, to be registered, 52—amenable to presbyteries, and not to kirk-sessions, 53.
- Process, what admitted as the ground of, 15—against a minister or probationer cannot be commenced in a kirk-session, 53—caution to be exercised in entering upon such a process, *ib.*—when to be instituted by a presbytery without a private party, *ib.*
- Processes to be referred by the kirk-session to presbytery, 21.
- Protest, against what judgment taken, 37.
- Qualification of elders, 5—of students proposed for trials, 47—of a presentee for a parish, 63.
- Questions to elders, 7—to probationers, 50—to ministers, 70.
- Reasons of appeal, must be lodged in order to the prosecution of the appeal, 25—of dissent, how disposed of, 34—of complaint also, 35.
- Record, what it is, 38.
- Reference, of what it should be, 24—how to be made, 31—situation of those by whom it is made in the court referred to, 32—how disposed of, *ib.*
- Register, separate, 83.
- Registers, how to be kept, 27—and revised, 92, 102.
- Scandals, what noticed as such, 15—prescribe in five years, *ib.*—cannot be revived after a final decision upon them, *ib.*—may be a subject of private admonition rather than ground of process, *ib.*—where noticed, 16.
- Schoolmasters examined by presbyteries, 154—proceeded against by libel in case of improper conduct, 155—judgment of the presbytery final, *ib.*
- Standing orders, 103.
- Stipend, amount of augmentation sought, to be stated to the presbytery, 154—presbytery to enter an appearance in a case of augmentation, *ib.*—and after the interlocutor has been pronounced, *ib.*

Students, examined by a presbytery, 45—proposed for trials, 46—resident beyond the bounds of this Church, and from universities out of this Church, 51.

Supplies to vacant parish, how given, 2, 62.

Translation, mode of proceeding in order to, 73.

Trials for license, 48—may be transferred, 52—for the ministry, 68—procedure in regard to, when they are not satisfactory, *ib.*

Union of offices, 76.

Vacant parish, from what time declared to be, 62—how supplied, *ib.*

Visitation, presbyterial, how conducted, 59.

Vote, casting, 4—how taken in the General Assembly, 103.

Witnesses, how summoned, 17—list of, to be given to party accused, *ib.*—how sworn and examined, *ib.*—in the case of a libel, 56.

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